DOCUMENT RESUME

ED 265 964 PS 015 631

AUTHOR	Cahalan, Margaret; And Others
TITLE	Comparative Study of State Case Review Systems Phase II: Dispositional Hearings. Structure and Operation of Dispositional Hearings in Selected States. Volume II.
INSTITUTION	American Bar Association, Washington, DC. National Legal Resource Center for Child Advocacy and Protection.; Westat, Inc., Rockville, MD.
SPONS AGENCY	Office of Human Development Services (DHHS), Washington, D.C.
PUB DATE	17 Aug 83
CONTRACT	105-82-C-009
NOTE	339p.; For other volumes in this survey, see PS 015 630-633.
PUB TYPE	Reports - Research/Technical (143)
EDRS PRICE	MF01/PC14 Plus Postage.
DESCRIPTORS	Adopted Children; *Adoption; Children; *Child Welfare; Compliance (Legal); Court Litigation; Courts; Decision Making; Federal Legislation; Hearings; Placement; *Program Evaluation; Program Implementation; State Legislation; State Programs; State Surveys; *Welfare Agencies
IDENTIFIERS	*Adoption Assistance and Child Welfare Act 1980; Arizona; California (San Francisco County); District of Columbia; Louisiana; Montana; North Dakota; South Carolina; Vignettes; Virginia

ABSTRACT

Under the Adoption Assistance and Child Welfare Act of 1980 (P. L. 96-272), Congress outlined a case review system intended to assure that child welfare agencies deal directly with various aspects of child placement. The second of four volumes, this document presents case study descriptions of the hearings within the context of the case review system in each of the eight states visited. The studies illustrate the variety of state responses to the dispositional hearing components of P. L. 96-272. In particular, they demonstrate the interaction between hearing implementation and the review system operating within a state prior to P. L. 96-272. The sites visited were all in the process of making significant changes in their review systems and were initially selected to illustrate the differing types of case review systems. However, as the descriptions indicate, each state had different problems to address and thus developed unique approaches to implementing case reviews and dispositional hearings. The eight states specifically covered were Virginia, California (San Francisco County), Montana, North Dakota, Arizona, South Carolina, Louisiana, and Washington, D.C. Finally, a series of vignettes drawn from actual cases serves to illustrate and define specific problems and issues arising from conclusions to be derived from each case and/or questions remaining to be resolved are summarized at the end of each vignette. (DST)

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

COMPARATIVE STUDY OF STATE CASE REVIEW SYSTEMS PHASE II -- DISPOSITIONAL HEARINGS

Structure and Operation of Dispositional Hearings in Selected States

Volume II

Submitted to:

Department of Health and Human Services
Office of Human Development Services
Washington, D.C. 20204

Primary authors for this report:

Margaret Cahalan, Ph.D.
Ronna Cook, MSW
Diane Dodson, JD

Submitted by:

Westat, Inc.
1650 Research Blvd.
Rockville, Maryland 20850

In affiliation with:

American Bar Association
National Legal Resource Center
For Child Advocacy and Protection

Contract No. 105-82-C-009

August 17, 1983

Any opinions, findings or conclusions expressed in these volumes are those of the authors and do not necessarily reflect the views of the sponsoring agency.

Acknowledgements

This project has been under the direction of Anita Schroeder, Ph.D. of Westat and Howard Davidson, Director of the National Legal Resource Center for Child Advocacy and Protection, American Bar Association.

We want to especially thank Alice Fusillo of the Children's Bureau for her helpful guidance and support as Government Project Officer.

Contributions to writing of the reports and conducting of site visits have been made by:

Sue Magnetti - Chapter 5, Vol. I; California
David Dalia - Louisiana
Jay Elliott - South Carolina
Anne Shalleck - Washington, D.C.
Carol Schrier-Polak - Virginia

Research assistance has been provided by:

Hessie Harris, ABA
Ellen Pais, ABA
Mary Parsons, Westat
Robyn Raysor, Westat

A special thank you to the State agency representatives for their help in ensuring the success of the site visits:

Jane Baxter, Arizona
Richard Dusko, Louisiana
Ramona Foley, South Carolina
Lillian Johnson, California
John Madsen, Montana
Bob Sanderson, North Dakota
Elizabeth Whitley, Virginia
Frank Williams, District of Columbia

Lastly, we want to thank the production staff for their patience and endurance:

Eleanor Austin
Vicky Daye
Madeleine Ducas
Linda Glenn
Charlotte Lass
Helen Prange
Vivian Ramsey
Lisa Towler
Stephne Witmer
Betty Anne Wohlfarth

TABLE OF CONTENTS

Chapter / Page

1 INTRODUCTION TO AND OVERVIEW OF VOLUME II . . 1-1

- 1.1. Group 1 - Judicial and Agency Administrative Review: Virginia and San Francisco County 1-2
- 1.2 Group II - Interdisciplinary Panels: Montana and North Dakota 1-3
- 1.3 Group III - Citizen Review Boards: Arizona and South Carolina 1-4
- 1.4 Group IV - Six-Month Judicial Review: Louisiana and Washington, D.C. 1-5

2 VIRGINIA 2-1

- 1. Contextual State Agency and Judicial Information 2-2
- 2. Applicable Virginia Law and Policy 2-8
- 3. The Functioning of the Hearings 2-15
- 4. Preliminary Discussion of Issues . . . 2-22

3 CALIFORNIA, SAN FRANCISCO COUNTY 3-1

- 1. California State Law and Regulations. . 3-2
- 2. San Francisco County 3-23
- 3. San Francisco County Case Review Policy 3-26
- 4. Functioning of the Dispositional Hearing Within the Case Review System 3-28
- 5. Discussion of Preliminary Issues . . . 3-40

4 MONTANA 4-1

- 1. State Background 4-1
- 2. Law and Legal Represenatation and Policy 4-7
- 3. Functioning of the Dispositional Hearing Within the Case Review System 4-18
- 4. Preliminary Discussion of Issues . . . 4-31

5 NORTH DAKOTA 5-1

- 1. State Background 5-1
- 2. Law and Policy 5-8
- 3. Functioning of the Dispositional Hearing Within the Case Review System 5-19
- 4. Preliminary Discussion of Issues . . . 5-30

6

TABLE OF CONTENTS (Continued)

Chapter Page

6 ARIZONA 6-1

1. State Background 6-1
2. Law and Policy 6-8
3. Functioning of the Dispositional Hearing Within the Case Review System 6-22
4. Preliminary Discussion of Issues . . . 6-49

7 SOUTH CAROLINA 7-1

1. Contextual State Agency and Judicial Information 7-2
2. Applicable South Carolina Law and Policy 7-7
3. The Functioning of the Hearings Within the Case Review System 7-18
4. Preliminary Summary of Issues of Concern 7-27

8 LOUISIANA 8-1

1. Contextual State Agency and Judicial Background 8-2
2. Applicable State Law and Policy 8-8
3. The Functioning of the Dispositional Hearings 8-18
4. Preliminary Discussion of Issues of Concern 8-25

9 WASHINGTON, D.C. 9-1

1. State Agency and Judicial Background Information 9-2
2. Law and Policy 9-12
3. Functioning of the Dispositional Hearing Within the Case Review System 9-28
4. Preliminary Discussions of the Issues . 9-42

10 VIGNETTES 10-1

THE DISPOSITIONAL HEARING WITHIN THE COURT REVIEW PROCESS 10-2

THE DISPOSITIONAL HEARING CONDUCTED BY A FOSTER CARE REVIEW COMMITTEE 10-6

THE JUDGE'S AUTHORITY AT A DISPOSITIONAL HEARING 10-10

TABLE OF CONTENTS (Continued)

Chapter		Page
10 (Cont.)	THE ROLE OF THE DISPOSITIONAL HEARING IN VOLUNTARY CARE PLACEMENTS	10-13
	THE ROLE OF THE DISPOSITIONAL HEARING IN FAMILY REUNIFICATION, Case #1	10-16
	THE ROLE OF THE DISPOSITIONAL HEARING IN FAMILY REUNIFICATION, Case #2	10-18
	THE ROLE OF THE DISPOSITIONAL HEARING IN TERMINATION OF PARENTAL RIGHTS	10-20
	THE ROLE OF THE DISPOSITIONAL HEARING WITH A CHRONIC ALCOHOLIC PARENT	10-26

1. INTRODUCTION TO AND OVERVIEW OF VOLUME II

This volume presents case study descriptions of the hearings within the context of the case review system in each of the eight states visited. The studies illustrate the variety of state responses to the dispositional hearing components of P.L. 96-272. They especially demonstrate the interaction between hearing implementation and the review system operating within a state prior to P.L. 96-272. The states also represent a continuum of state interpretations of the extent to which the dispositional hearing "shall determine the future status" of the child (i.e., viewing the hearing as a "fish or cut bait" decision point or simply a court review).

One of the findings of the Claburn, Magura and Resnick study was that in the mid-1970's those states having highly developed agency administrative review were less likely to have legally mandated court review and vice versa. The implementation of the two-tiered case review system outlined in P.L. 96-272 (semi-annual review by court or administrative body and court review by 18 months) has changed this either/or approach to case review. The sites we visited were all in the process of transition in which significant changes in their review system were being made.

In some states this involved modification or initiation of court review; in others the change involved development of third party administrative reviews in which parents participated; and in some cases both court and administrative reviews were being developed. In at least one state, judicial, citizen, and administrative reviews were being developed. These changes reflect the impetus to establish multiple levels of foster care review.

As indicated in Chapter 1, Volume I, the study states were initially selected to illustrate the differing types of case review systems. However, as the following descriptions indicate, each state has had different problems to address and thus developed unique approaches to implementing case reviews and dispositional hearings.

The remainder of this chapter presents an overview of how the eight study states have incorporated dispositional hearings into their case review systems. Sites visited are grouped together according to the type of reviews that were operating within the states at the time of the Phase I study.

1.1 Group 1 - Judicial and Agency Administrative Review: Virginia and San Francisco County

Both Virginia and San Francisco County were sites in which annual legally mandated court review had been operative prior to 1980, as well as agency administrative review. However, in Virginia, state statute did not specify that an actual hearing had to be held but only a court review. In response to P.L. 96-272, Virginia legislation was changed to mandate actual review hearings but the time frame was lengthened from 12 to 18 months. In addition, Virginia agency review was changed to include outside and parent participation and is now conducted in the form of a team conference review. Problems Virginia has faced include obtaining cooperation from judges to hold actual hearings rather than paper reviews and how to hold timely hearings for the backlog of historical cases in care before the new legislation. Within Virginia the hearings primarily currently function as a special review of the case plan and agency progress. The review is viewed as focused on permanency planning. With the exception of certain jurisdictions, participation of counsel in the hearings has not been frequent thus far for either the agency, parents or children.

Recently California law has been modified to mandate the court to conduct a permanency planning hearing to determine the future status of the child no later than 12 months after the child is placed in care (S.B. 14). The 12-month hearing is designated as a critical point at which an actual decision must be made as to whether the child will return home, be freed for adoption or have permanent foster care. The law outlines statutory standards and time frames for implementing the decision. The law also specifies that a periodic review must occur by the court or an administrative body every six months. Prior to P.L. 96-272 and passage of S.B. 14, children were reviewed in San Francisco County by the courts every six months. The review was a paper review unless there was a problem with the case. San Francisco County is in the process of bringing their semiannual court review into compliance with the new state law. It entails modification of the notification, reporting and decision-making standards for the hearings. Agency and court personnel were concerned that they were faced with a new law which required difficult decisions about children and their families and no funding to develop the appropriate resources.

1.2 Group II - Interdisciplinary Panels: Montana and North Dakota

Prior to P.L. 96-272, Montana had quarterly administrative review but did not have mandated court review. In response to the federal law Montana developed a system in which court appointed professional review teams conduct the periodic review and dispositional hearing. The court appointed review teams have the authority to make recommendations to the court but not binding decisions. Presently there is no requirement that the court actually review and/or act on the committee's recommendation. Hearings before a judge may be held if there is disagreement with the committee decision by the agency or parent; however, there is no mechanism to automatically trigger court action when there is disagreement.

Currently judges in some counties are beginning to conduct semi-annual reviews of court ordered placements. In these counties separate reviews are being conducted by the court and court appointed bodies, without coordination between the judges and review committees.

North Dakota also has a multi-disciplinary permanency planning committee, but this committee does not conduct the dispositional hearings. In response to P.L. 96-272, North Dakota law was changed from mandating court review at 24 months in order to continue custody, to requiring this review at 18 months. Statutory guidelines require specific consideration of termination of parental rights for children under the age of ten who cannot be returned home at 18 months. In practice the 18-month hearing is conducted to address whether to continue the child in foster care or not and may not result in a permanent decision on the child's future home.

1.3 Group III - Citizen Review Boards: Arizona and South Carolina

States within the third group have citizen review boards. Since 1974, South Carolina has had a legally mandated citizen review boards reviewing all children in care every six months. With the exception of a few counties, South Carolina did not have judicial review of foster care prior to P.L. 96-272. In response to the law the agency has drafted policy requiring agency petition for court hearings by 18 months, and they are now in the process of implementation. In Spring of 1983, at the time of our site visit, legislation was pending to legally mandate court review at 12 months. Issues within South Carolina relate to the relationship between the citizen review boards and the court hearings and the necessity for full court hearings when all parties, the agency, parents, children, and citizen review board, are in agreement.

Arizona is a state that has had annual judicial review for a number of years. However, in order to provide more in-depth reviews, citizen review boards were also organized in the late 1970's. Arizona has not implemented changes in their court review process since the passage of P.L. 96-272. They are in the process of implementing a new internal administrative review procedure. Major issues of concern in Arizona have related to the extent to which judicial reviews provide an actual decision on the future placement of children in foster care.

1.4 Group IV - 6 Month Judicial Review: Louisiana and Washington, D.C.

In 1981, when the JWK study was done, Louisiana and Washington, D.C. both had legally mandated court review at six months. Other agency reviews were not conducted on a planned basis.

Within Louisiana, while court reviews were mandated, this did not usually involve a court hearing. Only in certain urban jurisdictions were hearings routinely held. Actual court hearings on a statewide basis were in the planning stages at the time of our study. There was also a movement and legislation pending to establish citizen review boards. Judges interviewed in our study expressed caution toward the utilization of citizen review boards to conduct the "dispositional hearings." The agency wished to establish the boards only on a pilot study basis.

In the past year the agency has been implementing statewide team conferences to conduct periodic reviews. The team conferences involve a review in which the agency administrator, supervisors, caseworkers, outside professionals, parents, children and other interested parties participate.

The District of Columbia has had legally mandated court review since 1977. This typically involved one or more actual review hearings by 18 months; although after two years in care a certain number of children at the judges discretion would thereafter only have ex-parte reviews.

The District is now developing team conference reviews attended by parents and outside participants. Issues in the District related to the court reviews have been the timeliness of agency reports to the court, the use of and adequacy of counsel and availability of needed services such as housing.

2. VIRGINIA

The purpose of this report is to present an overview of the Virginia foster care and judicial systems and to report preliminary findings concerning the organization and functioning of dispositional hearings within the state. The information was collected through review of applicable state law, policy and available statistical reports; and through interviews conducted with state and local agency, judicial and legal personnel.

During March of 1983 a week long site visit was made to the Virginia state capital and to three local counties. The counties were selected in the following manner. Counties having more than one percent of the foster care population were classified into three size categories. From the list of counties willing to participate, a random sample was then drawn of one county in each size category.* The counties selected were:

Large County -- Newport News, Tidewater Region
Medium County -- Chesterfield, Richmond Region
Small County -- Stafford, Northern Virginia Region

---

*Certain counties indicated inability to participate due to involvement in other related studies or certification audits.

1. CONTEXTUAL STATE AGENCY AND JUDICIAL INFORMATION

1.1 Agency Background

Virginia's foster care program is state supervised and locally administered. At the state level, the foster care program is the responsibility of child welfare services, one of three bureaus under the division of service programs. The division of service programs is one of six divisions under the department of social services. A quality and control unit, responsible for the foster care information system, is under the bureau of management services.

Implementation of state foster care planning and supervision takes place through seven state regional offices (Tidewater, No. Virginia, Richmond, Roanoke, Valley, Southwest, and Lynchburg). At the local level there are 124 agencies responsible for service administration under the jurisdiction of county and city governments. In 1980 the number of social service workers who carried a foster care case load was reported to be 625.

1.1.1 Children In Care

In June, 1982 the total number of children in care was 7,085. This represented a reduction of 34 percent from the 1977 total of 10,827 (Annual Report of the Commissioner of Social Services to the 1983 Session of Virginia General Assembly). Of these children, 49.6 percent were white and 50.4 percent were nonwhite. The majority 52 percent, were 13 years of age or older, and 54 percent were male and 46 percent were female. The average length of time in care has remained fairly consistent since 1979, between 4.3-4.7 years per child (Foster Care Program Profile For the State of Virginia, 1982).

1.1.2 The Legal Basis for Custody

Children enter foster care in Virginia through court commitment or voluntary entrustment by the parents. Entrustments can be by permanent agreement, for the purposes of adoption, in which the parent agrees to surrender or terminate all parental rights and obligations; or by temporary agreement, in which the parent entrusts the child to the local agency until further plans can be made for the child. Temporary entrustment can not exceed 90 days without court involvement and under no circumstances can it exceed one year.

The reasons for court commitment included the following for children in care in June, 1982:

Exhibit 1. Legal basis for custody

Legal Basis	Percent of Active Cases
- Abuse/Neglect by parents	62%
- Parents requested to be relieved of custody	17
- Child in need of services	12
- Entrustment agreement	7
- Delinquency	2
- Not determined	1
Total children in care June, 1982	7,085

Source: Report to 1983 Session of Virginia General Assembly

From this it can be seen that the largest single reason for entering care was abuse and neglect.

1.1.3 Placement and Leaving Care

Of the children in care in June, 1982 the following placements were reported:

Exhibit 2. Types of foster care placements

Types of Placement	Percent of All Active Cases
Adoptive Home	7.7%
Nonrelative Foster Home	51.4
Relative Foster Home	5.3
Permanent Foster Care	12.4
Residential Facility	12.0
Independent Living	1.2
Own Home, Awaiting Placement	.3
Own Home	6.0
Emergency Shelter	.6
Runaway	.8
Other	2.0
Unapproved Home	.3
Total Children	100.0%
Total children in care	7,085

Source: 1983 Report to Virginia General Assembly

During the year 1981-1982, 3,129 children left care. Of the children leaving, 62 percent were white and 38 percent were nonwhite. Virginia State reports express concern over the fact that the average length of time in care for nonwhite children is 2.4 years more than that for white children as is reflected in the difference in numbers of children leaving care (Executive Summary, 1983 Report to General Assembly).

The termination status of children leaving care was as follows, with 44 percent of children leaving care returning home.

Exhibit 3. Children leaving care

Reason for Leaving Care	Percent of Children Leaving
Custody returned to parent(s)	44.0%
Adoption	16.9
Emancipation	21.5
Custody returned to relative	7.5
Custody returned to prior custodian	1.8
Commitment to Department of Corrections	3.2
Marriage	1.1
Other	4.0
Total	100.0%
Total children	3,129

1.1.4 Budget and Expenditures

Virginia foster care expenditures for 1982 were reported to be 15,101,395. This was up only slightly from the 1980 total of 15,004,834. Foster care program maintenance costs for children eligible for ADCFC were funded at 57 percent Federal and 43 percent state monies for fiscal year 1981. Maintenance for other foster care children was at 50 percent state and 50 percent local funds.

1.2 The Court Profile

Within Virginia the court responsible for giving temporary or permanent custody to the Department of Social Services is the Juvenile and Domestic Relations Court. According to Virginia statutes this court is responsible for decisions as to the "custody, visitation, support, control or disposition" of children who are alleged to be abused, neglected, in need of services or delinquent, §16.1-241. Among the matters over which this court has jurisdiction are the following:

- Juvenile Matters
    - Delinquency
    - Children in need of services (CHINS)
    - Juvenile traffic violations
    - Civil abuse/neglect
    - Termination of parental right
    - Approval of guardian petitions
- Adult Matters
    - Crimes committed against children or family matters
    - Support and custody desputes not involving divorce and those involving divorce upon waiver from the circuit court
    - Commitments to mental hospitals and facilities for mental retardation

In 1981, approximately 300,000 cases were heard. Of these approximately 203,000 were new cases. Adult cases were an estimated 34 percent of the total and juvenile matters were 66 percent. Only 5-6 percent were abuse/neglect cases.

There are 32 juvenile and domestic relations court districts with 70 judges. Judges are formally elected by the Virginia General Assembly for a term of six years. Local bar associations submit nominations to the chief circuit judge who makes temporary appointments pending initial approval by the local state representatives and other political groups, and final election by the State General Assembly.

The District Courts Commission, appointed by the governor and confirmed by the General Assembly is responsible for administering the court under the "guidance" of the Virginia Supreme Court. All cases in the Juvenile and Domestic Relations Court may be appealed to a circuit court for a de novo hearing.

2. APPLICABLE VIRGINIA LAW AND POLICY

2.1 Permanency Planning Policy

Since 1976 Virginia has taken a lead role nationally in implementing policy and legislation designed to achieve permanency for each child in custody (Foster Care program Profile for Commonwealth of Virginia 1981). The policy went into effect in 1976, and corresponding legislation, reflective of the commitment to permanency planning, was enacted in 1977 and most recently amended in 1982. The results of this policy are reflected in the statistics cited in Section 1.1 and in the state law to be presented in Section 2.2. Permanency planning policy in Virginia specifies foster care goals to be, in the order of priority:

a) Return to parents or prior custodians;

b) Placement with relatives; if a subsequent transfer of custody to the relative is planned;*

c) Adoptive placement;

d) Permanent foster care placement; and

e) Continued foster care (this includes children placed with relatives whose goal is not one listed above).

In September of 1981 the following were the case plan goals reported for children in care:

Case Plan Goals**	
Return home	33%
Adoption	18%
Permanent Foster Care	20%
Placement With Relatives	4%

---

*There has been some controversy as to the priority to give placement with relatives. Initial statements of goal priority listed this as a lower priority goal.

**This classification used slightly different goal categories than those currently specified in Virginia policy.

Not Yet Determined	3%
Total	100%

N = 7,929

Source: Foster Care Program Profile
For Commonwealth of Viriginia

Virginia state law and agency policy closely mirror each other. This section will first describe in detail applicable legislation and then present additional agency policy on the case review system.

2.2 Virginia Law With Regard to Taking Children into Custody and Judicial Review of Custody

The 18-month dispositional hearing requirement as treated in Virginia law must be considered within the context of the initial judicial role within the custody and case review process. A brief summary of these proceedings is presented below.

2.2.1 The Emergency Removal Order

While the majority of children do not come into care under emergency order, Virginia law specifies that children may be taken into "immediate custody and placed in shelter care pursuant to obtaining an emergency removal order in cases of abuse and neglect upon petition that establishes that the child would be subject to imminent threat to life and health and that no less drastic alternatives are available" (§16.1-251). The law also permits children to be taken into immediate custody without an emergency removal order when failure to do so would be subject to immediate threat to life and health. An emergency removal order must then be obtained at the next date at which court is open not to exceed 72 hours.

2.2.2 The Preliminary Removal Hearing

Within five days of taking the child into custody a preliminary removal hearing must be held. The statute states that this shall be in the nature of a preliminary hearing rather than a final determination of custody. Statute provides for notification of the parents, appointment of guardian ad litem, and advising all parties of right to counsel at this hearing. The statute states that all parties have the right to question witnesses and present evidence. If the court determines that removal is in order the court shall order that the child be placed in care and custody of the agency, or relative or friend.

2.2.3 The Initial Adjudicatory/Dispositional Hearing

Upon request from the agency, or other interested party, petition is then filed for the full dispositional hearing. This must be authorized by the court in-take officer. After the petition is filed summonses are issued to relevant parties. Counsel is appointed for all children in the form of guardian ad litem. Parents subject to loss of parental rights are advised of their right to counsel. Those found to be indigent are advised of their right to have counsel appointed. The court may order such investigations as it sees fit. Court dispositions may be as follows:

- Permit the child to remain home or return home;

- Transfer legal custody to one of the follow:
    - Relative or individual found by court to be qualified;
    - Child welfare agency, private organization or facility which is licensed or authorized by law to receive such child; and
- The local board of public welfare or social services who then has final authority over appropriate placement.
- Transfer legal custody to one of the above and order parent or legal guardian to engage in certain services or conduct;
- Terminate parental rights.

2.2.4 The Foster Care Service Plan

In any case where legal custody of a child is given to the local board of public welfare, the agency is then required by law to submit a foster care plan to the court within 60 days. The agency is directed to consult with the child's parents and other involved parties in formulation of the plan. The priority goal of the plan is directed to be the return of the child to parents or prior custodians. The plan contains two segments: Part A, to be completed in all cases and Part B, to be completed in addition to Part A, if a goal other than return home is formulated. Part A must contain:

- Description of services to be offered to the child, and parents or other prior custodians;
- Participation sought by child's parents;
- Visitation contacts to be permitted; and
- Nature of placement to be provided.

In the event that the agency determines it is unlikely that the child can be returned home within a practicable time the agency shall submit Part B which must contain:

- A full description of the reason for the conclusion not to return home;
- Opportunities for relative placement;
- Design for placement with relatives or adoptive placement; and
- Explanation of why permanent or continued foster care is recommended.

It is specified in statute that copies of the plan must be sent by the court to the child's attorney, and the parents, and Part A is sent to the foster parents. Any party sent the plan may petition the court for review of the plan. In addition, the court may call for review of the plan at any time although in practice this reportedly infrequently occurs. The court must be notified of any return to parents or other persons previously having custody.

2.2.5 Periodic Judicial Review - The New Dispositional Hearing Requirement

Prior to 1982, Virginia law provided for subsequent court review at 12 months. The law did not specify that a court hearing be held, and the usual practice in most counties was a paper review unless there was controversy in the case. In order to meet P.L. 96-272 requirements Virginia law was amended in July of 1982 to require that for all children who have not been returned home or placed in an adoptive home by 16 months in care, the agency must petition the court at 16 months and a hearing be held by 18 months. The statute specifies that the petition is to contain the following:

- A copy of the previously filed case plan;

- A description of placements and services provided to the child;
- A description of contacts between parent and child;
- A description of how the case plan goal was or was not completed; and
- If the disposition is sought and the reason for the disposition is continuation of foster care, a description of the role of the foster parent.

A copy of the petition is to be sent to the child, if at least 12 years of age, the child's attorney, the child's parents, the foster parents, the petitioning agency, and other interested parties.

At the conclusion of the hearing the court may enter an appropriate order "consistent with the dispositional alternatives available to the court at the time of the original hearing." (§16.1-279.)

The law provides for continuing jurisdiction and periodic review thereafter but does not specify time frames for subsequent reviews.

2.2.6 Other Hearings

The law specifically provides for judge's authority to call hearings at any time. Virginia law also provides for permanent foster care status agreements subject to court approval. Actual hearings may or may not be held with regard to such agreements. Parents may ptetition for return of custody of their children, as may the agency petition for termination of parental rights. The termination section of the law gives specific guidelines for justification of this decision. It is in the context of these hearings, occuring on an as needed basis, that the role of the dispositional hearing must be considered.

2.3 The Agency Case Review System

In addition to the legally mandated judicial case reviews, agency policy calls for administrative panel reviews every six months, and for those cases not covered by the administrative reviews (children placed adoptively and children in their own home under agency custody) six month supervisory reviews.

The administrative review was recently changed to meet P.L. 96-272 requirements to include at least one participant not responsible for the case management or service delivery. This may be a court worker, private citizen or other agency staff. All parents with residual parental rights and foster parents are invited to attend. The function of the panel is advisory. Cases on judicial appeal to higher courts are not subject to the reviews.

Virginia does not currently have a citizen's case review board, and this has not been seriously considered an option. Foster Parents Associations exist within the state, with some state funding support for conferences.

3. THE FUNCTIONING OF THE HEARINGS

Virginia is currently in a period of transition from legally mandated 12 month court review, with hearings being held only as needed, to legally mandated agency petition at 16 months for a hearing at 18 months. The results of the recent P.L. 96-272 compliance audit reflect this period of transition. This section first presents a brief overview of the results of Virginia's compliance audit, and then focuses on information on hearing functioning gained in the site visits.

3.1 State Certification and Audit Status

In March of 1982 Virginia was audited and in July of 1982 was found to be conditionally eligible for IV B funding for fiscal year 1981. This finding was based upon the fact that 28 percent of the 1981 sample cases reviewed had not had timely dispositional hearings. For this reason, a review of FY 1982 cases was required in 1983. At this review conducted in January of 1983 the regional program director recommended that Virginia be found not in compliance. This was based upon a review of 131 cases of which 32 were determined to be not acceptable, giving them a compliance rate of 74 percent rather than the required 80 percent. The primary reason given was as follows:

> The failure of local juvenile courts to conduct dispositional hearings as requested in local welfare department petitions. Of the 32 unacceptable cases, 24 did not have timely dispositional hearings (memorandum to Clarence Hodges, Report on State Eligibility under Section 427 - Virginia).

Virginia has indicated their intent to appeal this decision based upon the following reasons:

1. Virginia has indicated that its original certification applied only to children coming into care, after the date of certification;
2. Virginia law requires dispositional hearings upon petition by the agency. The Virginia Department of Social Services has indicated that the reluctance of judges to accept petitions is not within their control.
3. A sampling problem occurred since children leaving care were omitted from the sample; and
4. Virginia has had no opportunity to comment on federal guidelines and the guidelines are not formalized nor uniformally applied. (Alvin Pearis memo to Clarence Hodges, February, 1982).

3.2 The Implementation of the Hearings and Hearing Characteristics

3.2.1 Training and Orientation

Although the new state dispositional hearing legislation was passed in July, 1982 according to state office representatives, this change was not accompanied by an extensive orientation process such as accompanied the initial permanency planning legislation in 1977. At this time a grant had been obtained which included funds for extensive joint court-agency training efforts. The only state wide training was an overview of the new requirement given by a state Department of Welfare representative at the October, 1982 State Judicial Conference. Two of the six judges interviewed in Virginia did not know of the new state law. These judges recognized that there had been an increase in agency petitioning for hearings but reported they did not know why.

It was an almost universal sentiment of lawyers, judges and agency personnel that more orientation was needed. In two of the counties we visited letters had been sent to the judge or meetings held with lower court personnel concerning implementation the hearings, but agency personnel expressed concern that it had been left up to them to inform the judges of changes in state law.

3.2.2 Initiation of the Hearing Process

All three of the counties visited were in a transitional process of petitioning for the backlog of hearings for old cases coming into care before the law had been passed. Agency policy specified that cases in care prior to July, 1982 should have a hearing 10 months after their last administrative review. Estimates of the number of children in care prior to the state laws passage who have had their hearings thus far were 35 percent in Chesterfield, and about 65 percent in both Newport News and Stafford. Although some counties in Virginia have reported refusal of judges to schedule hearings, none of the counties visited reported this problem.

3.2.3 Petitioning, Scheduling and Notification

The court schedules the hearings following receipt of the agency petition. The agency includes with the petition a list of those to be notified. The law requires this to include parents, the child's guardian ad litem, the child if over 12 years and foster parents. Other interested parties may also be notified. Parties are sent a copy of the last case plan and the new plan prepared for the dispositional hearing. Only one county reported delay in scheduling due to backlog.

3.2.4 Legal Representation

At the conclusion of the initial hearing (to be held within five days of removal of the child) the court is mandated to appoint an attorney to serve as guardian ad litem for the child. It was not clear from the interviews whether in practice this was done in all cases. Parents are advised of their right to an attorney in subsequent hearings. However, appointment of counsel for indigent parents is not mandated except where termination of parental rights is contemplated and in criminal abuse/neglect matters. At the judge's discretion counsel may be appointed for parents in civil abuse/neglect cases, however this was not routinely done. In the majority of cases not involving termination, parents waive their right to counsel. Counsel are paid $73 per case (reduced from $75 in 1982 due to statewide budget cuts). Attorney's are usually appointed from a rotating list who volunteer to receive juvenile and domestic relations cases.

Thus far in the counties visited, legal counsel have not usually become involved in the 18 month dispositional hearings. In most cases their subsequent involvement after the initial dispositional hearing is only in cases of controversy, when TPR is requested, or when the parents petition for return of the child.

The agency is represented at TPR cases and other cases of controversy by the county attorney's office or a commonwealth attorney. These attorney's are not yet routinely involved in 18 month hearings.

3.2.5 Participation and Conduct of the Hearings

While all parties are notified of the hearings, only the agency petitioner is required to attend. Formal rules of evidence and due process procedures apply, but in practice often only the agency worker and the judge attend. Estimates of the percent of parents attending varied from 25 percent to 35 percent. Children who are not teenages rarely appear. In practice the hearing usually involves the social worker presenting the report to the judge. If parents or others are present they are asked for comment. Formal transcripts of the hearing are not made, since family court is not a court of record.

3.2.6 The Authority of the Hearings

The agency has prepared a court order form for use in the hearings. This form allows for three options:

- Approval of agency request;
- Approval with specific recommendations; and
- A change in the order (which is then specified).

A comment was received by one judge that the forms were not formated to indicate directly the judges decision.

It is clear from state law and practice, as indicated by those interviewed, that the court has the authority within the context of the hearing to order the agency to return the child home, provide specific services to the family for reunification, or order a long term plan for permanent foster care. However, while state law provides that a judge may order that custody be given to a specific individual, if custody is given to the agency, the judge can not then order the agency to place the child in a specific home. This provision of the law was the result of a Newport News case dispute between the judiciary and the Department of Social Services.

3.2.7 The Role of the Hearings in the Case Review Process

In practice thus far, the 18 month dispositional hearings have not frequently assumed the role of initiating changes in case plans nor are they viewed as a point at which a special turning point decision must be made. Those interviewed stated that the hearings infrequently resulted in changes in case plans. One part of the reason for this, as well as the lack of participation in the hearings, is that other hearings and judicial reviews have already been operating for these functions. These include TPR hearings, Permanent Foster Care Court Review, hearings on petition by parent for return of custody, hearings to extend care beyond 18 years of age, and review hearings in cases involving controversy or in cases where the court feels it should be involved in supervising agency service delivery. The primary role of the hearings, was seen by those interviewed to be one of ensuring that each case, even those not subject to controversy, had an independent review and increasing court responsibility and involvement.

3.2.8 Hearings to be Held Periodically Thereafter

While state law provides for hearings to be held after the 18 month dispositional hearing it does not specify a time frame. Proposed agency policy will provide for petition for subsequent hearings on a yearly basis. Due to the newness of state legislation little information is available on the functioning of these subsequent hearings.

3.2.9 Exclusions to the Hearings

Within Virginia, hearings are not now scheduled for children placed for adoption but still under agency custody or for children within their own homes under agency custody. According to proposed Federal regulations both of these groups are exempt from the hearing process. Children who have had court sanctioned Permanent Foster Care Agreements are scheduled for 18 months hearings but proposed agency policy will not schedule them for hearings to be held "periodically thereafter."

4. PRELIMINARY DISCUSSION OF ISSUES

As discussed above at the time of the passage of P.L. 96-272 in 1980, Virginia already had a legally mandated 12-month judicial review (not necessarily hearings) for children in foster care who were abused, neglected or voluntarily entrusted to the department. In order to meet the new federal requirement the law was amended to lengthen the time to 18 months, but to require an actual court hearing. Currently, several of the issues within Virginia reflect this transition from the 1977 law to the new legislation.

4.1 Implementation Issues

As indicated in the compliance review, judges in certain jurisdictions have not yet begun to schedule actual hearings when the agency petitions. According to some agency staff some judges have maintained that the law applies only to children coming into care after July, 1982 when the law took.effect. Other issues relate to how soon the agency has chosen to petition for hearings for those children in care prior to the law. Practical concerns were raised as to staff time involved in preparation for hearings for the backlog of cases. Judges and legal profession members expressed some concern over the increase in court dockets.

4.2 Training/Orientation

All perspectives agreed that there was a need for additional orientation and training for judicial and legal personnel as to the state and federal law. Few formal mechanisms had been set up between the courts and the agency for initiation of the new process. Court agency communication patterns varied depending upon the size of the county and the personality of the judges and agency personnel involved.

4.3 The Issue of the Role and Authority of the Courts

Related to the question of court agency interaction is the fact that it is the agency who must petition for the hearings, rather than direct court scheduling. The role of the court, while having authority to change the case plan, is reactive. The issue is raised as to what should be the proper role of the court, if any, in actual formalization of the case plan. Most judges interviewed felt the current arrangement was as it should be, but one judge wished the format, for the court order as a result of the dispositional hearing, to be in the form of a court decision rather than approval or disapproval of the agency plan.

However, all respondents indicated that judicial standards for termination of parental rights and the mandates of family unity found in the judicial code and common law were sufficient guidelines as to possible dispositions. No further specific dispositional standards were seen as necessary regarding the 18 month dispositional hearings.

4.4 The Issue of Legal Representation

As indicated above, currently legal representation in most counties in the 18 month dispositional hearings is minimal for the agency, parents and children. This reflects the fact, that as the hearings are now functioning there is often little controversy involved, and cases in which there is controversy would have had other types of hearings scheduled. However, some lawyers interviewed expressed concern about the large number of parents who waive their right to counsel and who lack sufficient understanding of the proceedings. There are questions as to whether legal participation should be increased, the purposes this would serve, and what would be the expenses involved. All agreed that additional training and orientation to permanency planning issues was needed by legal counsel within the state.

4.5 The Timing Issue

The 18 month hearing law lengthened the time before which the agency must petition judicial review. The sentiment was expressed that 18 months time was too long and that activity on cases should and often did take place before this.

4.6 Children Included

Questions were raised by some as to whether the hearing requirement should apply to those children in Permanent Foster Care and those for whom other hearings had been held within the time frame. Some felt that court review (rather than hearings) of cases would be sufficient for these types of cases. Note was made of the fact that hearings can sometimes be disruptive to parties involved after a permanent foster care agreement has been made.

4.7 Context of Service Delivery

Issues also exist as to the agencies ability to provide specific services ordered by the court for children. One of the advantages of the hearings was perceived to be its role in making apparent to the court and public the scant resources available to the agency. Court reviews were generally seen as valuable and necessary for insuring case movement and accountability.

3. CALIFORNIA

SAN FRANCISCO COUNTY

During March 7 through March 14, 1983, a visit to San Francisco County, California was conducted to assess the dispositional hearing proceedings for children in foster care. Unlike the other site visits, this visit was centered around one particular county, San Francisco County. However, since recent legislation was passed implementing dispositional hearing proceedings for the entire State of California, the first section of this report will outline statewide legislation and policy.

The remainder of the report will give a description of the overall organization and structure of the child welfare and juvenile judicial system in San Francisco County and outline how the dispositional hearing is functioning within San Francisco's case review system. Interviews were conducted with agency and court personnel and legal counsel in San Francisco as well as state child welfare agency personnel.

1. CALIFORNIA STATE LAW AND REGULATIONS

In October, 1982 the California legislature enacted Senate Bill 14 which addressed the federal mandates contained in Public Law 96-272 as well as emphasizing intensified prevention, reunification and permanent planning services for children.

The following section outlines California's state law and regulations with regard to case review and permanency planning for children in foster care.

1.1 California State Law

1.1.1 Initial Custody

Dependency proceedings in California begin with the filing of a petition by either a probation officer or a social worker, although usually petitions are initiated by the probation officer. (California Welfare and Institution Code Section 311.)

When a police officer takes a child into temporary protective custody, the officer has several options for custody arrangements, but must give preference to the alternative that least affects the parents' or guardians' custody of the child, as long as this alternative is compatible with the child's safety. The custody decision must also take cognizance of the community's need of protection and the child's need for placement in the least restrictive environment. (Cal. Welf. and Inst. Code Section 307.) The officer must consider maintaining the child in the family with the support of appropriate services.

(Cal. Welf. and Inst. Code Section 309(2)). The officer may decide to release the child, to prepare in duplicate a written notice which includes a statement of why the child was taken into custody to the parents and the child to appear before a probation officer at a specified time and place, or to take the child without delay before a social worker and notify parents of the child's whereabouts. The social worker must file a petition within 48 hours (excluding non-judicial days) or release the child.

If a petition is filed, a detention hearing must be held before the end of the next judicial day. Both the child and parents have the right to be represented at the initial hearing and to question witnesses before the court. (Cal. Welf. and Inst. Code Sections 311-316.)

The social worker must report to the court on why the child was removed from its parents, on the need for continued detention and on the available services which would aid the return of the child to its parents. (Cal. Welf. and Inst. Code Section 319.) The court must return the child home unless the child is in substantial danger and there are no reasonable means by which the child can be protected without removal.

1.1.2 Preventive and Reunification Services

The new California legislation establishes both a preplacement preventive services program and a family reunification program. The preventive program consists of a mandated emergency response program and a family maintenance program to provide ongoing services to enable children to remain in their own homes. (Cal. Welf. and Inst. Code Sections 16500 et. seq.)

The emergency response program must be available 24 hours a day, seven days a week, both for initial intake and assessment and for crisis intervention, to maintain the child safely in the home or otherwise protect the child. Any child reported to be abused or neglected is eligible for initial services. Officials responding in emergencies are required to consider providing appropriate services to maintain the child safely at home. (Cal. Welf. and Inst. Code Sections 16501.1(2), 16504, 16504.1.)

Family maintenance services (preventive services) must be provided or arranged for:

- Families with a child adjudicated abused or neglected but allowed to remain at home under agency supervision, and
- Families whose child is in danger of abuse, neglect or exploitation, who are willing to accept services and participate in corrective efforts and where it is safe for the child to remain at home only with the provision of services.

Family maintenance services which must be available include, but are not limited to, counseling, emergency shelter care, temporary in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training and transportation. These services are limited to six month periods but may be renewed for up to one year total. (Cal. Welf. and Inst. Code Sections 16501.1(b), 16506.1.)

Family reunification services must be provided to families with a child placed out of the home where the child has been found to be a dependent child or when adjudication is pending. Mandated services include counseling, emergency shelter cases, teaching and demonstrating homemakers, parenting training and transportation. Services are available for one year, but a court can extend the period to 18 months. (Cal. Welf. and Inst. Code Sections 16501.2, 16507, 16507.1.)

In addition to establishing the service programs, the statute requires that these services be fully considered as an option at a number of points in the judicial and agency decision-making process. The social worker or probation officer must consider leaving the child in the family and providing services to them when the child first is brought to his attention. (Cal. Welf. and Inst. Code Section 309(2).) At the initial hearing the agency staff must report to the court on the available services and referral methods which would facilitate return of the child to the parents. (Cal. Welf. and Inst. Code Section 319.) As an alternative to filing the petition the probation officer or social worker may arrange for appropriate services to correct the home situation which brings or threatens to bring the child under court jurisdiction. (Cal. Welf. and Inst. Code Section 330.) When a court orders a child's removal, it must also order the provision of reunification services for a period which may extend for up to 18 months. (Cal. Welf. and Inst. Code Section 361(e).)

1.1.3 Adjudication/Disposition

If the child is detained after the initial hearing, the court must schedule a jurisdictional hearing within 15 judicial days (Cal. Welf. and Inst. Code Section 319.) to determine whether the child fits within the categories of dependent minors protected by the statute. If the child was not detained, the hearing must be held within 30 days. (Cal. Welf. and Inst. Code Section 334.)

Dependent minors include:

- Those who are in need of "proper and effective parental care or control" either because they have no parent or guardian or because their parent or guardian is not willing or is not actually exercising such control;
- Those who are destitute;
- Those who are physically dangerous to others "because of a mental or physical deficiency, disorder or abnormality; and
- Those whose homes are unfit "by reason of neglect, cruelty, depravity, or physical abuse" of parents, guardians or other caretakers. (Cal. Welf. and Inst. Code Section 300.)

At the conclusion of the evidence the court must make a finding on whether the child is a person described by Section 300. If the court finds that the child does fall within the jurisdiction of the statute, it can then proceed to hear evidence about a proper disposition for the child, or it can postpone the disposition hearing for up to 10 judicial days if the child is detained and no more than 30 days from the filing of the petition if the child is not detained. (Cal. Welf. and Inst. Code Section 356.)

After receiving and considering the evidence presented at the disposition hearing the court may "order and adjudge the minor to be a dependent child of the court" and as such, the court may order such limitations on parental control of the child as are necessary to protect the child. Alternatively, the court can, without adjudicating the child "a dependent child of the court," order the provision of services to the family and child to keep the family together, under the supervision of the probation officer/social worker. (Cal. Welf. and Inst. Code

Section 360.) Children adjudicated dependent are not to be removed from their parents unless there is clear and convincing evidence that:

- The child would be in substantial danger if returned home and there is no way to protect the child in the home;
- The parent is unwilling to have custody of the child and has been notified that if the child remains outside of their physical custody for more than twelve months, the possibility exists that termination proceedings may be instituted;
- The child is "suffering several emotional damage" and cannot be protected in the home; or
- The child has been sexually abused and cannot be protected in the home or the child does not wish to return home. (Cal. Welf. and Inst. Code Section 361.)

The court must state the facts on which its decision is based and must notify the parents that their parental rights may be terminated if they are not able to resume custody within twelve months. (Cal. Welf. and Inst. Code Section 361.)

1.1.4 Reunification Plan

The court must order the probation officer or social worker "to provide child welfare services to the minor and the minor's parents or guardians" to facilitate family reunification within twelve months. The court can extend the service period to eighteen months on evidence that the plan's objectives can be achieved within that longer period. (Cal. Welf. and Inst. Code §361(e).) The reunification plan might include "specific recommendations for improvements within the home, successful completion of therapy programs or other conditions for returning the minor to the home." (Advisory Committee Comment to Cal. Rules of Ct. 1376(b).)

1.1.5 Periodic Review

The court may require the probation officer or any other agency to make periodic reports to the court on a minor committed to its care. (Cal. Welf. and Inst. Code Section 365.)

The status of every dependent child in foster care must be reviewed by the court at least once every six months until the permanency planning hearing (described below) is complete. (Cal. Welf. and Inst. Code Section 365(a).) A similar six month court review is required in cases in which the child remains at home under court supervision. (Cal. Welf. and Inst. Code Section 364.)

The court must determine at the review:

- The continued necessity for and appropriateness of the placement;
- The extent of compliance with the case plan;
- The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care; and
- A likely date by which the child may be returned home or placed for adoption or legal guardianship. (Cal. Welf. and Inst. Code Section 366(a).)

The court must also decide at the review whether to return the child home. It must return the child unless it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department has the burden of proving this evidence but the parents' failure to participate in court ordered treatment programs constitute prima facie evidence that return home would be detrimental to the child. The court must consider the probation officer's report and must consider the parents' efforts, cooperation and use of services provided. (Cal. Welf. and Inst. Code Section 336.2(d).)

Reviews must be scheduled on the hearing calendar. Notice of the hearing must be mailed by certified mail to the parties in the original proceeding, the minor's present custodian, and to counsel of record not more than 30 or less than 15 days before the scheduled hearing. Alternatively, the notice may be personally served. (Cal. Welf. and Inst. Code Section 366.2(b).)

The probation officer must file a report with the court covering services offered the family, progress made, and likelihood of the child's return home and must make a recommendation for disposition. The probation officer must provide a copy of the report to the parents at least 14 days before the hearing. (Cal. Welf. and Inst. Code Section 366.2(c).)

At the hearing itself the court must make the findings required and order additional services needed to facilitate the child's return home. The court must inform all persons present at the hearing of the date of the next hearing and of their right to be present and represented by counsel. The parent or guardian must be warned that if the child cannot be returned home by the next hearing, a termination of parental rights action may result. (Cal. Welf. and Inst. Code Section 366.2(a), (d).)

After the permanency planning hearing periodic six month reviews may be conducted by either the court or an administrative review. (Cal. Welf. and Inst. Code Section 366(b), 366.25(g) and (j), 16503.)

1.1.6 Permanency Planning Hearing

In order to provide a stable, permanent home for each child in care, the court must conduct a permanency planning hearing to determine the future status of the child no later than 12 months after the child is placed in care and at least every 18 months thereafter. The permanency planning hearings may be combined with the required six months periodic review. Parties and counsel must be notified of the hearing in the same way they are notified for six month reviews, above. (Cal. Welf. and Inst. Code Section 366.25(a) and (b).)

At the hearing the court must decide on one of the following dispositions in the case:

- Return the child to the parents' custody;
- Continue the child in foster care for no more than six months;
- Order county counsel to file a termination of parental rights case;
- Order an appropriate county agency to initiate or facilitate proceedings to establish a guardianship for the child; or
- Order the child be placed in long-term foster care. (Cal. Welf. and Inst. Code Section 366.25(c) and (d).) If the child is continued in foster care for up to six months the next hearing must be the final permanency planning hearing to decide on the child's future status. (Cal. Welf. and Inst. Code Section 366.25(c).)

Criteria are established for choosing among these options. If the child can be returned home under the criteria used at the six months review, then the child must be returned home. If there appears to be a substantial probability the minor can be returned home within six months, the child can be continued in foster care for up to six months until a final permanency planning hearing at which one of the permanent options must be selected. (Cal. Welf. and Inst. Code §366.25(c).)

If the child cannot be returned home and the court finds the child is adoptable the court must order the county attorney to file a termination of parental rights case unless:

- The parents or guardian have maintained regular contact with the child and the child would benefit from a continued relationship with the parents;
- The child is 12 or older and objects to the termination of parental rights;
- The foster parents are, for good reason, unable to adopt the child but would continue to care for the child in a stable home and it would be detrimental to the child's emotional well-being to move the child. (Cal. Welf. and Inst. Code §366.25(d)(1).)

If the child is not adoptable, or one of the exceptional reasons above is present, the court must order the agency to facilitate the establishment of a guardianship for the child if an appropriate adult is available and eligible. (Cal. Welf. and Inst. Code §366.25(d)(2).) If there is no suitable adult willing to become the child's guardian the court must order the agency to place the child in a home environment that can be expected to be permanent and stable. When the present foster parents are willing to provide such an environment the child should not be removed if doing so would cause the child emotional harm by breaking the ties to the foster parents. (Cal. Welf. and Inst. Code §366.25(d)(3).)

Guardianship

Although generally guardianship proceedings are conducted under the Probate Code, guardianship proceedings for children under juvenile court supervision may be conducted in juvenile court. (Cal. Welf. and Inst. Code §366.25(e).)

1.1.7 Termination of Parental Rights

Grounds for termination include:

- Abandonment of the child (leaving the child in the care and custody of another, including a foster care home, for a period of six months also constitutes abandonment).
- Cruelty or neglect if the parents have been deprived of the custody of the child for at least one year;
- Parental disability caused by alcohol or controlled substance abuse or by moral depravity when the parents have been deprived of the custody of the child for one year;
- Conviction of a felony that proves parental unfitness for custody;
- Parental inability to discharge parental responsibilities because of mental illness or mental deficiency; and
- Placement of the child in out-of-home care for at least twelve months if the court finds "by clear and convincing evidence that return of the child to the child's parents or parents would be detrimental to the child" and that the parents, despite the availability of services designed to overcome the problems that had led to loss of custody, have failed during that interval and will likely fail in the future to provide a home for the child, to provide care and control for the child and to maintain an adequate parental

relationship" with the child. (Cal. Civil Code §232(a).)

The court, in all termination proceedings must consider the wishes of the child and should act in "the best interests of the child." (Cal. Civil Code §232(b).)

Termination proceedings are instituted by the county counsel, or, if none, the county district attorney at the request of the State Department of Social Services, the county welfare department, licensed public or private adoption agencies, or county probation departments. The action to terminate parental rights should be filed within 30 days of the request. (Cal. Civil Code §232.9.)

The report filed by the agency in the termination proceedings must include a statement that indicates that the child was told the nature of this legal action and records the child's feelings regarding the action, attitude toward parents and whether the child would prefer to live with the parents, and the child's feelings about attending the hearing. (Cal. Civil Code §234.)

1.2 State Regulations

In order to carry out the mandate of S.B. 14, new state regulations were implemented on an emergency basis. The regulations provide explicit direction to county welfare departments for implementing the federal mandates found in P.L. 96-272 as well as implementing S.B. 14. Initially the regulations emphasize the law's criteria for removing children from their homes in the first place. If a child is removed, the regulations address the time-limited family reunification services, permanent plans and the foster care case review structure outlined by S.B. 14. To emphasize these issues, the regulations have divided out-of-home services into two distinct chapters, family reunification and permanent placement. The dispositional hearing proceedings exist in the context of the reunification and permanent placement services. Therefore, the following will provide a brief description of each of these chapters.

1.2.1 Family Reunification

The Family Reunification chapter stresses family reunification as the first priority for children who have been placed in foster care. The chapter outlines the case planning, services, and case review processes that county social welfare departments are required to implement.

1.2.1.1 Case Planning

To begin the case planning process, an assessment focusing on the identification of problems which must be addressed if reunification is to be achieved must be completed by the agency within ten working days from the date of court-ordered or voluntary placement. Based on the assessment, a service plan must be developed and a supplementary service agreement must be signed by the parents and county welfare department within thirty days of the assessment. If a parent will not sign the service agreement, the reason must be documented in the case record. To ensure participation of the natural parents in the reunification process, state policy also outlines procedures for intensified visitation and standards for social workers in assisting parents to understand agency procedures, orders of the courts, arrangements between agencies, and parent's rights and responsibilities while the child is in care. Parents are provided a copy of the service agreement.

1.2.1.2 Service Provision

The chapter on reunification also outlines the duties and services the agency must provide in order to achieve family reunification. Policy specifies the services that must be provided to the natural parents, foster parents and children. These include:

- Social workers will have face-to-face contact with the child at least monthly;
- Criteria for out-of-county placement and supervision;
- Service activities such as parent training, respite care and counseling;
- Criteria to be used in selecting a foster home;
- Active visitation between child and natural parents, including visits supervised by social worker;
- Criteria for case documentation and information to be included in the case plan goal and the service plan; and
- Notification procedures for all case services (participant notified at least fifteen days prior to the hearing.

1.2.1.3 Case Review

While a child is in foster care and reunification is being considered, the following reviews must take place:

- Supervisor: Assessments, service agreements and reassessments on all children must be reviewed by the social worker's immediate supervisor.

- Reassessment: An administrative or judicial review must be conducted at six months prior to the permanency planning hearing at twelve months. An administrative review must be conducted every six months for children placed voluntarily prior to January 1, 1982.

- Permanency planning hearing: If a child remains in care for twelve months, a permanency planning hearing must be conducted by the court. At this hearing, the agency has the option of requesting a six-month extension, if they feel the service plan can be accomplished. If not, it is at this point that the agency recommends an alternative permanent plan and the case is then considered a permanency planning case rather than reunification. (In many counties this even means transfer of social worker.) Policy stipulates that if parents fail in reunification by twelve months, termination of parental rights will be considered. It also stipulates that the county welfare departments are required to assist the courts in its review of each child in placement. Notification of the permanency planning hearing must be provided to participants not earlier than thirty days and not later than fifteen days in advance of the court hearing.

1.2.2 Permanency Planning

When family reunification time limits have expired or are unsuccessful, a child is to be referred to a county's permanent placement program. Case planning continues with a new assessment completed within thirty days of placement. Time-limited objectives are developed, with priority to screen adoptive homes whenever possible. The agency must notify the parents in writing if they are moving toward termination. The permanent placement chapter stresses that permanent placement programs must include the following reviews:

- Supervisory approval of caseworker plans and reassessment;
- Administrative review committees to assist in the review and development of long-term permanent plans; and
- Case reassessment every six months to review potential adoption or guardianship placements.

The permanency planning chapter also outlines the organization of the six-month administrative review. Counties have the option of using court reviews instead of the administrative review in counties where court reviews are conducted every six months. If a county is to implement the administrative review process, it must contain the following components.

1.2.2.1 Administrative Reviews

County welfare departments are responsible for developing and implementing an administrative review plan which outlines the number and size of review panels established, criteria for appointing members, procedures for appointment and termination of members, summary of training for panel members, notification procedures, procedures for conducting hearings and standards for scheduling hearings. Guidelines for administrative panels are outlined by state service policy and include the following.

Organization

As many administrative review panels as needed to ensure timely review of all cases are to be established. Each panel shall include three or more members, with at least one member being outside the direct line of supervision of the case under review. Specific representation is not mandated, however policy states that members shall be selected from staff of the agency responsible for placement and care, staff from other agencies, officers of the court, and members of the public. Panel members are to be selected for a specified period of time. County welfare departments are also responsible for providing necessary staff support to carry out panel responsibilities. This support is to include, but is not limited to, notifying participants, acquiring necessary information, recording and distributing reports.

Procedures and Duties

Administrative panels are to review the following cases periodically, but not less frequently than once every six months:

- Children placed voluntarily prior to January 1, 1983;
- Children in foster care;
- Children freed for adoption; and
- Severely emotionally disturbed children placed voluntarily in foster care.

It is not necessary to conduct an administrative review which would duplicate a concurrent court review.

The purpose of the review, as outlined by policy, is to determine:

- The continuing appropriateness of a placement;

- The continuing appropriateness of and extent of compliance with the permanent plan;
- The extent of compliance with the case plan; and
- The adequacy of services provided to the child.

Agency personnel are responsible for presenting summary information to the administrative panel which will enable panel members to determine the objectives listed above. This information is to include a description of the child's current situation, the parent(s) or guardian(s) situation, and overall status of the case.

After hearing the case, the administrative panel is responsible for completing a report on the review within five working days of the hearing. The report is to include a summary of the child's situation, the findings, and if there are modifications, a list of specific changes including time frames for their completion. After the agency receives the review recommendations, they have seven days to distribute the report to:

- The child, if twelve years or older;
- The parent or guardian;
- The child's case worker;
- Other hearing participants; and
- The juvenile court.

In order to control unnecessary hearing delays or continuances, the state policy specifies that hearings shall be postponed or continued only at the request of the child, parent, or if the review panel determines the need for more information. Also, delays shall not exceed ten working days, and only one postponement or continuance can be granted.

Participation and Notification

At the time of initial placement, the agency is responsible for advising parents, guardians, children (age appropriate) and foster care providers describing the review process. The agency is also responsible for providing written notice to hearing participants fifteen days prior to a scheduled administrative review.

Parties to be allowed to participate in the administrative service include:

- Parent(s) or guardian(s);
- Relations who have been significantly involved in the case;
- The child, if twelve years of age or older;
- Current foster care provider;
- The social worker responsible for the child's or parent's case; and
- Other professionals working with the families.

Policy does not specify that these people must be allowed to participate, only that they shall be allowed to participate. Policy specifies that the review panel is to solicit comments from all participants.

Authority

The review panel is to make determinations upon the objectives listed under procedures. State policy does give the panel the authority to modify the placement, the permanent placement plan, the agency's current individual case plan goal and services. If the review panel determines that a change is necessary, the panel shall direct the agency to petition the court for recommended changes. It is then the agency's responsibility to notify the panel if the court does not modify the court order as recommended.

Regulations do not outline procedures to ensure that agencies do petition the court about recommendations made by the committee.

1.3 The Judicial System

Juvenile court in California is a division of the Superior Court in each county. The chief judge of the Superior Court in the county designates one judge as juvenile court judge of the county. That judge is the administrator of the entire juvenile court system. Additional judges may also be designed to be juvenile court judges or may be designated to hear individual juvenile court cases.

The juvenile court has jurisdiction over abuse, neglect and dependency cases; delinquency cases; termination of parental rights cases; adoption cases; and guardianship cases (for children under juvenile court supervision). Domestic relations cases are based elsewhere in the court system.

Judges are elected for six year terms. However, if a judge is appointed to fill an unexpired term he or she must stand for election at the end of two years even if the unexpired term was for longer.

Judges are state employees. Their salaries are paid 80 percent from state funds and 20 percent from county funds. All other employees of the juvenile court are paid by the county at salary rates set by the state.

In addition, the judge of the juvenile court may appoint one or more experienced attorneys to serve as full- or part-time referees. The referee serves at the pleasure of the appointing judge and is paid by the county board of supervisors. A referee may hear all cases assigned by the juvenile court judge. The referee's orders are immediately effective unless the juvenile court judge requires express judicial approval first. Parties, however, are entitled to a rehearing by a judge if they disagree with a referee's order.

Court rules are issued by the Judicial Council of the State Supreme Court. The Supreme Court is also responsible for administration of the statewide court system and issues rules and forms for all courts. Judges assumed that juvenile court rules soon would be revised to reflect the changes of S.B. 14 (the new legislation establishing permanency planning hearings statewide).

All Superior Court judges, including juvenile judges, are members of the California Judges Association. The Association holds periodic meetings and offers training. S.B. 14 was to be a topic at an upcoming meeting many juvenile judges were planning to attend.

2. SAN FRANCISCO COUNTY

Section 2 of this report will concentrate on a description of the overall organization and structure of the child welfare and juvenile judicial system in San Francisco County.

2.1 Agency Background

The foster care program in San Francisco is administered by the Family and Children's Service Division of the Department of Social Services (DSS). The Program Director of Family and Children's Service Division reports to the Director of DSS.

The division is divided into four service sections, and each section is comprised of the service units described below:

- The intake section has three units providing emergency and evaluation services;
- The in-home section is comprised of five units providing CPS, general services and homemaker services;
- The out-of-home section provides foster care services through five permanent planning and long-term foster care units; and
- The boarding home and institutional placement section has three units providing services to children in these types of placements.

Foster care services are delivered from the main DSS office, by staff outstationed at the juvenile court, and through specialized programs at different locations in the county. One of these special programs is the Andrew Jackson School in which social, medical and educational services are provided to children in temporary emergency care. The placement evaluation services and emergency protective service units are also located in the school.

There are approximately 50 workers providing foster care services to children placed out of their homes.

Support for children in foster care is provided through federal, state and county funds. State funds are provided to the counties through a service allocation formula based on reports of service delivery submitted by county directors.

With the passage of S.B. 14, the majority of the funding received for children's services under the Social Security Act goes directly to the counties.

2.1.1 Service Population

Children under the supervision of the DSS are only children adjudicated dependent by the courts; voluntary placements are presently not being accepted.

The number of children in foster care has begun to show a steady decline since 1981, with 1,397 children in care in December, 1981 and 1,295 children in care as of December, 1982. The number of completed adoptions has increased over the last three years as indicated below:

1981 - 56 completed adoptions
1982 - 77 completed adoptions
1983 - 135 projected completed adoptions

Native American Population

Less than one percent of the foster care population is Native American. In accordance with the Indian Child Welfare Act of 1978, Indian tribes have jurisdiction over Indian children on and off the reservation. The tribe can maintain jurisdiction or relinquish jurisdiction. When a child is first taken into care, a state form indicating the child's tribal affiliation is sent to the Bureau of Indian Affairs or to the appropriate tribal council to verify affiliation. While awaiting a decision on tribal affiliation, the child either remains in temporary care in a home supervised by DSS or, if unavailable, a home located by the Indian Center in Oakland.

If tribal affiliation is confirmed and the tribal council accepts jurisdiction, DSS does not maintain custody. In those cases where the tribe declines jurisdiction, DSS retains jurisdiction and agency review procedures and policies are followed.

2.2 The Judicial System

The juvenile court in San Francisco is housed in a separate facility from the rest of the Superior Court. At present there are two juvenile court judges and two commissioners in the court. Previous juvenile court judges have had that assignment for one to eight years. The second juvenile court judge was added only recently. As a result of her addition, it will be possible to hear termination of parental rights cases in the juvenile court rather than designating other superior court judges to hear them as was the previous practice. This was done because the juvenile court judge had usually heard other aspects of the case and believed it would be a conflict to hear the termination case as well.

3. SAN FRANCISCO COUNTY CASE REVIEW POLICY

San Francisco Agency personnel indicated that 1981 was the transition year for implementing the permanency planning philosophy into policy and procedures. The passage of S.B. 14 established further criteria for implementing permanent plans for children. Section 1 outlined the state regulations developed for implementing the criteria of S.B. 14. This section will address the specific policies established by San Francisco County DSS to augment the case review proceedings for children in foster care. Section 4 will outline how these procedures are functioning.

3.1 Case Review

Review of children in foster care in San Francisco County is conducted internally through administrative, supervisory and specialized review teams as well as externally through judicial and state reviews.

Once a child has been removed from his/her home, the case is referred to the evaluation unit, where an assessment and initial case plan are developed. Prior to initial disposition, the case is presented to the Placement and Review Committee (PARC). The committee provides consultation and review of initial plans and makes placement recommendations. Throughout a child's stay in care, the committee may also be involved in change of placement decisions, further review of case plans and act as a resource for decisionmaking. The committee meets on a weekly basis, and cases to be reviewed are based on referrals made by social workers, supervisors, or by request of the PARC committee.

Other ongoing internal agency case review includes staffings conducted by the permanency planning units on those children that have been in the unit for a year and those cases that are in a crisis situation. There are also ongoing reviews conducted by the worker's supervisor, which focus on the reassessment of the case plan and progress towards achieving goals and objectives. Reviews outlined in state policy are also conducted (or conducted as outlined above).

Aside from the above reviews, severely emotionally disturbed children are reviewed by the Interagency Placement Committee (IAPC) if placement in a locked facility is being considered.

Randomly selected cases are reviewed by a state representative on a quarterly basis to check for compliance with state and federal service regulations. The review focuses on documentation in the case record for a service plan, contacts with parents, children and foster parents, and documents indicating results of reviews that have been completed.

3.2 Court Reports

State law now requires that social service staff file a report with the court at least 16 days before the hearing and send a copy to the parents at least 14 days before the hearing. The report is supposed to cover services offered the family, progress made, the likelihood of returning the child to his or her parent or guardian and the worker's recommendations for disposition of the case.

4. FUNCTIONING OF THE DISPOSITIONAL HEARING WITHIN THE CASE REVIEW SYSTEM

As outlined in Sections 1 and 3 laws and policies have been established to structure the review of children in foster care. San Francisco County is in the process of implementing new procedures to comply with Senate Bill 14. This section focuses on implementation problems and current level of functioning for case review and permanency planning hearings.

4.1 Functioning of the Case Review System

Basically, DSS has not needed to implement any new internal case review procedures to come into compliance with S.B. 14 or the state regulations recently enacted. The reviews outlined in Section 3 are conducted on an ongoing basis, and workers and administrators felt the reviews were productive in establishing permanency plans for children. Parents were not included in internal agency reviews. Before the enactment of S.B. 14, children were reviewed by the court every six months. The review was a paper review unless there was a problem with the case. According to agency personnel, the parents were notified that a report was being sent to the court, that the judge would be reviewing the report and the parent was invited to appear in court. They stated that parents usually chose not to attend. Agency administration and court personnel have agreed to continue this six month review to meet state law requirements for the administrative review.

The focus of the initial six month hearing will be changing to come into compliance with state law. At the time of our site visit workers had not attended a six month hearing under the new regulations. When asked if they anticipated them to be any different, they indicated that they did not think so. The format of the report that they had to file was changing, but they would still only appear at the hearings in which there were anticipated problems.

4.2 Permanency Planning Hearings

At the time of the site visit to San Francisco the state was in transition from the old system of annual judicial reviews to the new system of six month judicial reviews and twelve month permanency planning hearings. San Francisco is probably somewhat ahead of many counties in the transition because a prior juvenile court judge had been aware of the federal legislation and had had the court begin holding more detailed reviews on a semi-annual basis.

4.2.1 Who Conducts the Hearings

Most reviews, now including the permanency planning hearings, are heard by a juvenile commissioner. Prior to the current legislation, the court had established a "problem calendar" on which cases the court was especially concerned about, because of lack of progress or because of a belief checking up would help to ensure progress, are placed. The presiding juvenile judge hears the problem calendar and presumably, therefore, will conduct the permanency planning hearing for children whose cases are on that calendar.

4.2.2 Scheduling/Notice

The statute requires that the permanency planning hearing be scheduled "no later than 12 months after the original placement" (and at least each 18 months thereafter). In fact, hearings were being scheduled not 12 months after the child was first placed in foster care, but 12 months from the date of the court disposition following adjudication that the child was a dependent child. Because of pre-trial delays a child can easily be in foster care for several months prior to the disposition. As a result, permanency planning hearings would often be held several months later than 12 months after the child entered foster care.

At the end of any hearing to review the child's status the court must advise everyone present at the hearing of the date of the next hearing. As a result, the date of the permanency planning hearing is set at the six month review, or later review, and any parties present should be notified at that time.

A court clerk prepares a calendar for upcoming hearings, from calendar minutes (entries in the court's order and findings) as they are sent back following a hearing. There is also a computer print-out that shows the date on which each foster care order must be renewed in order to remain in effect. However, the scheduling is basically hand-done, based on the minutes entries.

The DSS court liaison staff notifies the DSS caseworker of the date of the next hearing including the permanency planning hearings so that a report may be prepared on time. The DSS court liaison staff is also responsible for sending notices to other parties.

69

The statute requires that notice of the permanency planning hearing be served on the child's parents or guardian, children over 14, the nearest relative if a parent is not served, the minor's present custodian and counsel of record. Notice may be served by certified mail or personal service not earlier than 30 days or less than 15 days before the hearing.

In practice in San Francisco, written notice is sent by certified mail to the natural parent, children over age 12, agency, and attorneys for parents, child or agency if there are any. Legal guardians are also served. It is not clear whether the statutory mandate to serve the child's present custodian refers to the agency as legal custodian or the foster parents as actual custodians. In fact, foster parents are not routinely notified. It is not clear whether the present notice clearly states the possible result of the hearing. However, all of the forms relating to the hearing, including notice forms, are currently being revised to reflect S.B. 14 requirements.

The method of notice poses some problems. Although on their face the notice provisions appear adequate, in fact, it was reported that a large percent (one respondent stated it might be as high as 85 percent) of the parents did not pick up certified mail and therefore received no notice of the hearing at all. This is not unusual among poorer people who fear notices from bill collectors, as the most likely kind of certified mail. While in other parts of California this problem was addressed by sending notices by ordinary mail in addition to certified mail and by having caseworkers talk to parents personally about the hearings, no such efforts were routinely made in San Francisco.

On questioning, DSS and court staff indicated a belief it was too much paperwork and would cost too much to send duplicate notices by ordinary mail.

4.2.3 Court Reports

Revised court reports have recently been drafted by the DSS court liaison, and are anticipated to be put into practice very shortly. Copies of the reports will be sent to the parents as well as the court. Workers had mixed reactions to sending court reports to parents. Some workers thought they would be unable to include pertinent information into the report whereas others felt the reports would be very helpful in casework practice with parents.

4.2.4 Participants

At present most court reviews involve court review of documentation only or court review of documentation with the DSS liaison worker present. The individual caseworkers do not attend the hearings unless there is a problem. Instead, they submit their report and the agency is represented at the hearing by the DSS liaison worker only. Counsel for the agency is not generally present at this point.

Although a large percent of parents do not receive the certified mail notice of the hearing, approximately 10 percent of those who receive notice do attend the hearing. Attendance is not required. Judicial staff noted that as the court had begun giving warnings at the initial disposition hearing about the possibility of termination of parental rights after 12 months, parents' active interest and sense of urgency has increased. They anticipated parents actively trying to find out when the hearing would be held and participating more actively. They also anticipated parents would be more likely to attend when they routinely began receiving copies of the agency report in the mail shortly before the hearing. Parental participation at this stage is in contrast to parental participation at the initial disposition, in which approximately ninety percent of parents attend.

It was reported that participation by other interested parties (i.e., foster parents, legal counsel) was also occurring in about 10 percent of the cases. It was reported that counsel were occasionally appointed to represent the child at this stage of the proceedings. Foster parents are occasionally allowed or invited to participate as parties and may even very occasionally be represented by counsel.

4.2.5 Formality of Hearings/Due Process Safeguards

The court consideration at review consists of only a review of written documentation with input from the DSS liaison. All judicial staff interviewed agreed that in about 3 to 6 percent of cases parties were present and an agreement had previously been reached out of court; that in 3 to 5 percent of cases parties were present and presented their views but no witnesses were present. In approximately 2 percent of cases a full hearing was held with witnesses presented.

In all cases, parties have the right to present and cross-examine witnesses although if parties appear with witnesses at the regularly scheduled review date the case may be held over and set on a different date on the calendar to allow more time for the hearing. It was reported that contested reviews could take an hour or an afternoon. A record is made of the hearing and parties have the right to appeal.

Written findings or orders are issued as a result of the hearing. However, court, probation and DSS staff were working on developing new forms for findings and orders to ensure some uniformity and to make computerized record-keeping easier.

4.2.6 Decisionmaking Standards/Authority of the Court

Unlike statutes in most states, California law, as amended by S.B. 14, is now very clear in requiring a final decision on the child's future status at the permanency planning hearing and in providing clear statutory standards for the decision to be made, as outlined in Section 1.1.

Judicial officers in San Francisco are well aware of these legal requirements. Nonetheless it appears that the process of permanency planning hearings, as described by the statutes, are not yet fully in operation although it does appear that regularly scheduled review hearings are being held. There was some ambivalence expressed about whether permanency planning hearings per se are actually being held or only regular court reviews. It appears some of each are happening. Concern was expressed about whether it was fair to make the kinds of decisions required by the statute at twelve months when parents had not been duly warned at the outset of the case of the consequences of failure to resume care of the child within twelve months. S.B. 14 requires such warnings to be made both at the disposition hearing and at the six month review. Such verbal warnings are now being given and a record of them made at disposition, but they are not yet part of the written findings given to parents at the disposition. Forms are presently under revision to provide such a written warning. In any event, such warnings were not given a year before the current reviews and judicial officers are reluctant to make a decision, other than one allowing for return home, without those warnings having been made.

Judicial officers generally believed they had ample authority to issue orders to carry out their decisions at the permanency planning hearing, including authority to order the agency to:

- Return the child home;
- Provide services to the family with a plan of return at a specified period;
- Initiate termination of parental rights proceedings;
- Take steps to place a child for adoption within a certain time frame;
- Establish a long-term foster care plan for the child;
- Place the child for custody or guardianship; and
- Place the child in a specific placement.

A judge indicated a lack of authority to order the agency to file for guardianship and indeed the statute only authorizes the court to order the agency to facilitate the guardianship. In fact, the city attorney has recently been filing guardianship proceedings on behalf of families willing to be guardians.

Since the new statute went into effect the court has been more willing to order efforts toward reunification. The judge expressed the view that whereas he previously had felt he was intermeddling when he ordered provision of services the statute now specifically authorized him to do so when it appeared children might then be able to return home. In addition, the statute mandates that certain services be available and he felt free to order that any of those services be provided. In addition, the court was more frequently ordering specific visitation plans at hours convenient to the parents and was ordering more psychological and psychiatric evaluations. DSS staff were somewhat resentful of the judge ordering services which they had in short supply and ordering visitation at times after usual agency working hours.

While no judicial officers in San Francisco expressed this concern, other observers of the overall implementation of S.B. 14 indicated a fear that if the termination of parental rights provisions of the act were strictly enforced the agency would be ordered to file termination actions against many poor parents who would have been able to resume care of their children had adequate services been provided. Alternatively, judges would be reluctant to terminate parental rights - and, indeed, in some cases the statute would not allow it - if services had not been offered to the families prior to the permanency planning hearing. Lack of funding for services was thus seen as a major problem in implementing the permanency planning hearings.

4.3 Counsel

The Department of Social Services is represented by the City Attorney's Office in San Francisco. (Ordinarily DSS is represented by the county attorney but in San Francisco the city and county are coterminous.) There is a Department of Social Services Section in the City Attorneys Office. The head of it has in recent years hired three attorneys with a specific career interest in "child law." As a result because those attorneys wanted to stay in the section it has been possible for attorneys in the section to develop expertise in DSS matters such as termination of parental rights. Training has also been made available to them.

When possible criminal prosecution is involved in an abuse or neglect case, the district attorney may also be involved in the civil aspects of the case.

Children are appointed counsel in what was estimated to be less than fifty percent of cases, and perhaps many fewer. It was reported that there was little chance of counsel being appointed at the initial dependency phase of a case. More frequently, counsel was appointed when a child had been in foster care for a period of time and there was a question of a permanent plan for the child. It was reported that there was no clear standard for when to appoint counsel and that the several judicial officers varied greatly in when they appointed counsel. One referee was reported to appoint counsel with some frequency, others infrequently. Counsel were reportedly appointed somewhat more often to represent older children who could express their desires to the attorney.

Money was mentioned as a concern by at least one commissioner in explaining why he appointed counsel on only an "as needed" basis. When counsel is appointed, it is most often from Legal Counsel for Children, a privately funded, nonprofit group with expertise in representation of children. Their services are available at no cost to the court. Less frequently, counsel are appointed from a list of attorneys willing to accept juvenile court appointments for a fee.

Parents, too, are not automatically appointed counsel if they cannot afford to retain counsel. The public defender service provides representation for indigent parents. When they have a conflict in the case, the court appoints an attorney from a backup panel of attorneys willing to accept appointments in juvenile court cases. The public defender or other counsel is appointed to represent parents in something over fifty percent of dependency cases. Generally, if the parent contests the allegations or asks for counsel they are referred to the public defender service.

This system of appointing attorneys primarily if there is a contested dependency hearing means that parents and children are often not represented during critical case planning and permanency planning phases of the case even though there may be no contest about the basic allegations of the dependency petition.

The law provides that whenever it appears to the court that a child or his parents want counsel but cannot afford to employ counsel, the court may appoint counsel. When there appears to be a conflict between parent and child and one is already represented by counsel the court must appoint counsel to represent the other. (Cal. Welf. and Inst. Code Section 317-318.) When it is alleged that a minor's home is unfit by reason of neglect, physical abuse, cruelty or depravity counsel must be appointed for the child at the detention hearing if there is one. The court may appoint the district attorney to represent the minor. When there is a pending criminal charge the district attorney must, with the consent or at the request of the juvenile court judge, represent the minor "in the interest of the state" at the juvenile court proceeding. (Cal. Welf. and Inst. Code Section 318(a), 351.) At the hearing on the dependency petition, the court is to explain the petition to the minor and any relative or guardian present. If the parent, relative or guardian wishes to have the child represented by counsel, the court may appoint counsel. (Cal. Welf. and Inst. Code Section 353.)

S.B. 14 did not extend the mandatory right to counsel throughout the state although in the demonstration counties all children have a right to appointed counsel as do all parents who wish counsel but are unable to afford counsel. (Cal. Welf. and Inst. Code Section 318.5, 353.5.)

5. DISCUSSION OF PRELIMINARY ISSUES

Our site visit to San Francisco County was soon after the passage of S.B. 14 and, agency and court personnel were engaged in implementing its requirements. As personnel did not know what the impact would be there was a tremendous amount of speculation as to the problems and advantages of the new law. This section will highlight those issues which have been identified by personnel in San Francisco County and observations made during the site visit.

5.1 Funding

The overriding concern of agency personnel about the passage of S.B. 14 was that it was passed without providing funding for services which would enable the requirements to be implemented properly. Staff indicated they were reluctant to return children home if there were not ample services to maintain a child in his/her own home. On the other hand, they were also reluctant to file a petition for termination when they did not have funding for services to initially attempt to reunify a family. Staff cited that the demonstration counties under the Family Protection Act had been provided adequate funding for ensuring that services could be provided to families to maintain children in their own homes. In their county they were faced with a new law which required difficult decisions and no money to implement them.

5.2 Notice of Permanency Planning Hearing

While the statute mandating that parents, older children, counsel, the child's custodian and other interested parties be served with notice personally or by certified mail appears adequate, in practice, in San Francisco, notice of the hearing may not actually reach many of the parties because it is sent only by certified mail and is not picked up by the parties. A backup system of notification is needed that is calculated to actually reach the parties such as ordinary mail. Telephone calls or personal visits from caseworkers might be used in addition. Receiving a written statement of the possible results of the hearing, receiving a copy of the agency report, and earlier warnings about the possible outcomes of the permanency planning hearings should also serve to increase participation when fully implemented. In addition, care should be taken to determine whether the statute actually requires notice to the foster parents in addition to the agency.

5.3 Legal Counsel

Although S.B. 14 adopted many aspects of the law that had been established for the demonstration counties it did not adopt the portion that mandated appointment of counsel for all children and for indigent parents. In fact, counsel is not routinely appointed for children in San Francisco and there are substantial numbers of parents who are unrepresented as well. No guidelines have been established to give guidance on when counsel should be appointed.

5.4 Implementation Problems

Under state law, all children had to have a permanency planning hearing by April 1, 1983. Even though a six month periodic judicial review was already operating in San Francisco there was a tremendous backlog of cases, and confusion as to how this hearing was to be different then what had previously been taking place.

Workers were aware there was a new law and some indicated that training had been provided by the state office but they did not foresee any major difference between the system they were operating within and the new requirements in terms of the hearing procedures. Agency administration indicated that they were not emphasizing the differences at this time, but would slowly incorporate them into practice. The first step was to incorporate the new formats for court reports.

Some major concerns about implementing the new law focused on how the time limitations would affect decisions for children and their families in regards to:

- Children being returned home prematurely;
- Whether or not the court would really follow through with the time limitations; and
- The inability to maintain in-home dependents for more than 60 days.

There was also concern that full implementation of the law by April, 1983, posed the following problems. First, with no extra staff, the court is expected to conduct approximately 800 permanency planning hearings in a six month period. These are all the children who have been in care at least one year. When the system is fully operational, permanency planning hearings will be held one year after children are placed in care and hearings will be staggered. At present, however, one cannot hope for more than perfunctory hearings without additional staff and additional efforts to encourage parents to attend.

Full implementation of such a major change was also perceived to require lead time to give parents fair warning of what could happen at the permanency planning hearing. It was perceived to be unfair to "spring" such a drastic decision on them in such a short time frame when they had received no warning of the possible results of their inaction. Making the change required changing procedure at the original disposition hearings and six month reviews to give warnings, and changes in the forms to give such warnings in written form.

4. MONTANA

The purpose of this report is to give a description of the overall organization and structure of the child welfare and juvenile judicial systems in the State of Montana, and to outline how the dispositional hearing is functioning within the state's case review system. During March 28 through April 1, 1983, a site visit to Montana was conducted to assess the dispositional hearing proceedings for children in foster care. Information was collected through review of applicable state law, policy and available statistical reports, and through interviews with members of the foster care review committee, legal counsel, agency and court personnel. The counties visited include:

Large County -- Yellowstone
Medium County -- Lewis and Clark
Small County -- Ravalli

Montana statute requires the establishment of Foster Care Review Committees in each judicial district to review, at least every six months, the case of each child in foster care, in accordance with federal and departmental requirements. (Montana Code Ann. §41-5-807.) It should be noted that Montana's dispositional hearing approach involving the Foster Care Review Committees has been mandated since October, 1981 and actually operating for approximately nine months.

1. STATE BACKGROUND

1.1 Agency

Montana's foster care program is state supervised and county administered. Montana law designates the Montana Department of Social and Rehabilitation Services (DSRS) as the agency responsible for protection of children who are homeless, dependent, neglected, abused, or in danger of becoming delinquent. DSRS has authority to administer services to fulfill these responsibilities and to develop appropriate policies and procedures. The DSRS has delegated its responsibility to the Community Services Division. Service delivery is administered through the 56 county social service units of the local welfare departments. The counties are mandated by law to comply with the policies, procedures and requirements of the Department of Social and Rehabilitation Services of the State of Montana, Community Services Division.

In order to supervise the delivery of services at the county level, the Community Services Division has divided the state into an eastern and western region. The director of community services has an assistant located in each of these areas. Within these two regions are eight district offices. Each state district has a state supervisor who reports to the assistant director of community services and coordinates with the county director of the local county welfare office. The county director is hired by the director of DSRS and the local county board of supervisors. There are approximately 120 foster care workers at the local county offices who report to the county directors. Payment for children in foster care is made through county, state and federal funds. The state supervisors are directly involved in review of foster care cases, thus completing a structure which creates ongoing coordination between the state department and county welfare departments.

1.1.1 Service Population

Currently children under the supervision of the Community Services Division include children in need of care, children in need of supervision, and delinquent children. DSRS is also responsible for joint supervision (with the youth court) of delinquent children placed in foster care.

Approximately one-quarter of Montana's population, or about 244,130 people, are under the age of 18. Each year there are about 8,000 child protective service referrals, of which approximately 5,000 are valid. The number of children in foster care has ranged from 932 children in June of 1978 to 757 children in 1980 to 907 children in December of 1982. Although the number of children has fluctuated up and down from year to year, there has been a steady decrease in the average length of care. Today the average length of care is approximately 1.5 years, whereas four years ago children averaged 2.4 years in care, and six years ago the average was 3.1 years. Of the 907 children in care in December, 1982, the length of time in care breaks down as follows:

Less than one month	51
One month - less than six months	255
Six months - less than one year	155
One - two years	179
Two - three years	77
Three - four years	77
Five years or more	118

Of these 907 children, approximately one-third entered care because of the child's conduct or condition (i.e., handicap, behavior problem), one-third entered care because of a valid report of child neglect, and one-third entered due to other parent/caretaker reasons (i.e., conduct, condition or absence).

1.1.2 Native American Population

There are 7 Indian jurisdictions and 13 tribes in Montana. In August, 1980, there were 119 Indian children in foster care, accounting for approximately 21% of the state foster care population. As of December, 1982, there were 171 Indian children in care. In accordance with the Indian Child Welfare Act of 1978, Indian tribes have jurisdiction over Indian children on and off the reservation. Maintenance payments to the foster family are made by either DSRS or the Bureau of Indian Affairs. Written agreements are still in the process of negotiation between tribal councils and DSRS to clarify supervision and review for Indian children receiving maintenance payments from DSRS. The newly established Foster Care Review Committee is mandated to review Indian children. Committees in judicial districts with Indian populations are encouraged to have a tribal representative on the committee.

1.2 The Judicial System

The Montana judicial system consists of the state supreme court which hears appeals and district courts at the trial court level. Trial court judges are elected to the district court for six-year terms. Judicial districts consist of several counties. While judges are considered state employees, the costs for operation of the district courts are assessed against the several counties included in the judicial district. There is a limit on the tax which can be levied by counties for operation of the district courts and in a number of districts the cost of court operations exceeds the legal limit counties may tax their citizens. The state has filled in with limited emergency funding to keep those district courts in operation.

The district courts are administered at the district level. There is not a separate state level, or supreme court, administrator with responsibility for statewide court administration or for setting policy.

Juvenile cases, including "youth-in-need-of-care" cases (abused, neglected and dependent youth), are heard in the district court, as are all family matters. One judge in each judicial district is designated to serve as the youth court judge with responsibility for youth court matters in the district. If a more senior district judge does not accept the task, the most junior district court judge is, by statute, assigned the responsibility. The designated youth court judge does not necessarily hear all juvenile and youth-in-need-of-care cases. These may be shared by some or all of the district court judges in the district. However, the designated youth court judge is administratively responsible for the cases. There is no statewide association or regular statewide meeting of those district court judges with youth court responsibility.

Each district court has at least one juvenile probation officer who works under the designated youth court judge. The main responsibilities of the probation officer are for juvenile delinquency and status offense cases but they also provide some small measure of backup to the court on youth-in-need-of-care matters as well.

1.3 Judicial/Agency Relationship

There appeared to be little routine state level coordination between DSRS and the judicial system and no institutionalized mechanism for such coordination. This may be due to the fact that there is no state level person or organization with the ability to speak for the district courts. Coordination required that contact be made with judges on a district-by-district level.

DSRS staff indicated that the relationship between court and agency staff has become strained at times because of differences over payment for services for children.

Currently there is a bill before Montana's legislature which will transfer funding for shelter care and after-care services from the Department of Institutions to the Department of Social and Rehabilitation Services. This will mean that money for all out-of-home care for children will be funnelled through DSRS. It is hoped that this structure will lessen the payment disagreements.

DSRS recently hired two attorneys to interview judges and county attorneys to identify problem areas in dealing with youth-in-need-of-care cases and to prepare a desk book for judges and lawyers on Montana child abuse and neglect law. A report on the findings was prepared, and steps to implement resolution are beginning to take place. The desk book has been completed and will be disseminated statewide. Although steps to resolve issues between the agency and individual court systems are beginning, an institutionalized way to deal with systematic issues between DSRS and the judiciary is not in place.

At the county level, there is more informal coordination. The state supervisor, for example, and the judge, may sometimes meet each other socially and discuss common concerns. The establishment of the Foster Care Review Committee opened discussion between county offices and judges. However, regular channels of communication between agency staff and judges to discuss systemic issues (rather than individual cases) are not in place.

2. LAW AND LEGAL REPRESENTATON AND POLICY

2.1 The Law

Montana law stipulates that children may come into foster care in one of several ways.

Voluntary Placement

Children may be placed in care under the authority of a voluntary parental agreement with the agency. Such cases are not reviewed by the court, nor do they come under court jurisdiction.

Emergency Protective Service

Children may be taken into care under emergency protective service provisions in situations in which officials have reason to believe a child is in immediate danger or apparent harm. In this case a petition requesting further legal authority must be filed within 48 hours.

Temporary Investigative Authority

Children may also be brought into care through use of an order for temporary investigative authority (TIA) (Montana Code Ann. §41-3-402). Temporary investigative authority allows a child to be brought into care for an indefinite but temporary period on a mere showing of probable cause that the child is in danger of being abused or neglected. The parents retain legal custody. A full hearing to determine whether the child is abused, neglected or dependent is not held. TIA's routinely last for 90 days and are commonly extended for additional 30- to 60-day periods. Although the use of this mechanism can delay formal action on a case, it can also provide authority to conduct an investigation when the parents are uncooperative or there is not enough evidence to file for temporary custody.

Temporary Custody

Petitions for temporary custody may be filed at the outset of a case or at the expiration of the TIA. For an order of temporary custody to be issued, the court must find, on full adjudication of the case, that the child is a "youth in need of care" (i.e., is abused, neglected or dependent). (Montana Code Ann. §41-3-404.) Legal (and physical) custody may then be placed with DSRS. The law does not spell out any maximum duration for orders for temporary custody, nor does the statute require further judicial review of the child's case.

Permanent Legal Custody With the Right to Consent

Montana law provides for termination of parental rights on a petition for permanent custody. Parental rights may be terminated on:

- Parental relinquishment;
- Abandonment of the child;
- Proof that the child is a youth in need of care;
- Proof that the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; and

- Proof that an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful.

(Montana Code Ann. §41-3-609.)

The 1981 Parent/Child Legal Relationship Termination Act includes a provision for implementing treatment plans. A treatment plan is defined in Section 41-3-603(4) as a written agreement between DSRS or the court and the parents, which includes the action which must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services of the child. The plan establishes a written understanding, sanctioned by the court, of the roles and responsibilities of the parents and social service agencies providing treatment. A further discussion of the treatment plan purpose and use in the case review process will be discussed in Section 3.1.

As stated earlier, Montana statute does require the establishment of foster care review committees in each judicial district. Further description of these committees is found in Sections 2.3 and 3.2.

2.2 Legal Representation

Legal representation in court matters involving youth in need of care is provided to the agency by the county attorney's office. The county attorney is an elected official in each county and is paid by county funds. In larger counties, additional deputy county attorneys may be employed. The agency is represented at hearings by either the county attorney or deputy county attorney.

Agency personnel expressed concern over their legal representation. While there were some highly commended county attorneys, in practice, it was often the most junior deputy county attorney who was assigned youth court duty, and who would move on to another assignment after gaining several months experience in youth court. In other counties, obtaining interested representation from the county was reported to be hampered by the county attorney's primary interest in being "corporate counsel" for the county.

The 1979 Montana Legislature made the appointment of a guardian ad litem mandatory in every child abuse and neglect proceeding. The law specifies the guardian to be appointed "at public expense". Often, a guardian ad litem is appointed for a child only if the parents are contesting the case or if the department has requested appointment of counsel for the child. While state law specifies guardian ad litems to be paid for "at public expense", there is no statutory designation of which budget should pay them. District courts, financially pressed to begin with, are finding it very difficult to pay appointed counsel. One rural county is implementing a volunteer guardian ad litem program. It is believed that these volunteers will do a more thorough investigation of the child's circumstances while saving money for the system.

Counsel for parents are generally not appointed through the judicial system. In many cases, parents are advised of their right to counsel through the social worker, who refers them to the legal services program. Although there was some funding from DSRS to the state legal services program for representation for parents, federal funding cutbacks to legal services have resulted in less representation for parents. At this time new services have not been implemented to fill this gap.

2.3 Permanency Planning Policy

Historically, the focus of Montana's child welfare policy has been on the protection of the child. Montana State Law §41-3-101(2) states that it is the policy of Montana to:

- Ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;
- Compel in proper cases the parent/guardian of a youth to perform the moral and legal duty owed to the youth;
- Achieve these purposes in a family environment whenever possible; and
- Preserve the unity and welfare of the family whenever possible.

Over the years, protection of the child has evolved to include a child's right to a permanent home. Montana has developed state policies to shorten a child's stay in foster care and focus on permanent placement. Based on state law, the following policies and committees have been instituted to aid in this decisionmaking process.

2.3.1 Referrals for Foster Care Placement

As stated in Section 2.1, a child enters the foster care system either through a reported abuse or neglect or through a parent's voluntary placement of the child. If a child is placed in foster care voluntarily, a parental agreement is supposed to be signed and placement must be approved by the worker's supervisor. By policy, a parental agreement is to have a three- to six- month time limit and is to exceed one year only with the approval of the state supervisor.

If a report of abuse or neglect is made to the county welfare agency, social workers make an initial investigation. Following the investigation, the agency must petition the court for:

- Emergency protective services; or
- Temporary investigative authority and protective services; or
- Temporary legal custody; or
- Permanent legal custody with the right to consent to adoption.

Agency policies for each of these proceedures are governed by the statutes outlined in Section 2.1. All agency petitions to the court must be submitted by a county attorney.

2.3.2 Case Review

Based on Montana law, the department has established the review procedures for children in care. This section describes the written policies that have been developed. Sections 3.1 and 3.2 will outline how these procedures are actually functioning.

Child Protection Teams

The county attorney or county welfare director may establish a child protection team whose members "shall include a social worker, a member of local law enforcement agency, a representative of the medical profession and a county attorney". These teams have been implemented in approximately one-half of Montana's 56 counties. Policy allows for the role of these committees to extend from coordinating the services of the various agencies dealing with child abuse and neglect to assisting social worker in developing treatment plans for children and their families.

Agency Review

Initial placement decisions must be reviewed by the social worker's immediate supervisor. After placement, an administrative review by the social worker's immediate supervisor and district supervisor is to take place every two months, until the child's sixth month in care, and then every six months after that.

Each child brought into care is to have a treatment and service plan developed between parent and social worker. Policy encourages that parents be involved in developing the plan, and where appropriate, the child also be involved. The plan is to be used to establish a written understanding of the roles and responsibilities of the parents and social service agencies providing treatment.

Foster Care Review Committees

Senate Bill 228 creating Foster Care Review Committees became law October, 1981. Its purpose was to support permanency planning for children in foster care and to direct the Department of Social and Rehabilitation Services to continue its efforts in this area.

The passage of P.L. 96-272 was instrumental in the passage of Montana S.B. 228. The FCRC were developed to meet the periodic review and dispositional hearing requirements of

P.L. 96-272. Montana had formerly operated under an internal review system of children in foster care, with a limited amount of judicial review. The Foster Care Review Committees were established to augment administrative and judicial review. Montana's system is unique in that although the FCRCs are appointed by the court, the department has played a major role in developing the rules, training the volunteers, and scheduling and conducting the meetings.

Organization

It is mandated that there must be at least one Foster Care Review Committee (FCRC) in each judicial district in the state. The committee members are to be appointed by the youth court judge "in consultation with the department" (DSRS). Each committee is to consist of no fewer than four members or more than seven members and must include:

> A representative of the department (DSRS);
>
> A representative of the youth court;
>
> Someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court; and
>
> A representative of a local school district.

The term of office of the members of the FCRC is not specified by either statute or regulations. Participants assume they serve until they resign. Membership on the committee is totally voluntary, with no financial reimbursement of any costs. Presently there is a bill before the Montana legislature, which would mandate that the foster care provider be considered a voting member of the Foster Care Review Committee for the time that their particular case is being reviewed. Although the department supports the involvement of foster parents in committee meetings, they are opposed to voting membership for foster parents.

Scheduling

The committee is mandated to conduct a review on any child placed in substitute care who is under the supervision of the department, placed by the department, or paid for by the department.

Each child who has been in care for six months must have a review by the six-month anniversary date of the initial placement. Each child must also be reviewed every six months thereafter while in care.

Administrative rules specify that the state level DSRS "Evaluation Bureau" prepare a computer list of children to be reviewed and notify districts and counties two months in advance of each child's review date. It also specifies that state supervisors are responsible for scheduling reviews.

Participation

Department regulations provide that the natural parents of the child must be notified of the FCRC meeting and must be allowed to attend the meeting except when parental rights have been terminated. Regulations also specify that the following may be invited to attend: age-appropriate children (no set age), the foster care provider, the child's guardian ad litem and "other people as appropriate". The social worker and supervisor, prior to the review, are to decide which of these parties are to be invited to attend. It is specified that the social worker on the case and his or her supervisor shall also attend the meeting.

Duties of the Committee and Agency Employees

The social worker is responsible for preparing a report on each child prior to the FCRC meeting. Policy states that the report must answer the following questions:

- Are the child, parents, foster parents receiving appropriate services designed to get the child home?
- Have reasonable efforts been made by the placing agency to return the child to his or her home?
- Can the child return home? If not, why not? What efforts must be made by the parents and agency before the child can return home?
- In the interim, is this placement the least restrictive, most appropriate and as close as possible to the parents' home so as to facilitate visitation?
- Does the child's treatment plan need to be modified?
- By what date may it be expected that the child will return home, be placed for adoption or other alternative permanent placement situation (i.e., permanent foster care or guardianship)?
- To what extent have the parents visited the child, what attempts has the placing worker made to facilitate visitation, and any reason why visitation has not happened?

By policy, these reports are to be submitted to the FCRC 15 days prior to the meeting. Many of the committees throughout the state have agreed that they do not want to recieve the reports until the day of the meeting. The local youth court judge is also to receive a copy of the report 10 days before the meeting.

The committee, within 30 days of the review meeting, submits a written report to the judge and the department summarizing the findings and recommendations. The report includes:

- Answers to the same questions that the workers answered in their report to the committee;
- Recommendations and reasons as to continuation or discontinuation of foster care; and
- Treatment needs of child.

Authority

The review committee has the authority to recommend to the court, through a written report, their findings following the review of each case. The committees do not have the authority to make binding decisions.

With the enactment of new state laws and policies since 1979, the direction of delivery of foster care services in Montana has been refocused. The laws and policies were put in place to move children into permanent placements rather than maintaining them in foster care. Section 3 will provide a description of how these laws/policies are actually functioning for children in foster care.

3. FUNCTIONING OF THE DISPOSITIONAL HEARING WITHIN THE CASE REVIEW SYSTEM

3.1 Functioning of the Case Review System

As outlined in Section 2.3 policies have been established to structure the review of children in foster care. Actual implementation of these policies varies among the counties.

The type of case review a child has is dependent upon how the child entered the system and the extent to which the district court is involved in the review of cases. A child entering on a voluntary placement is reviewed by agency personnel and the Foster Care Review Committee (FCRC). Although policy stipulates a time limit for voluntary placement, the amount of time spent in care by children voluntarily placed varies substantially from county to county. State agency personnel indicated that there is currently an emphasis on limiting voluntary placements to six months or less. If a placement is to continue for a longer time period, social workers are being encouraged to bring these cases to court. Although voluntary care cases are reviewed by the foster care review committee, there is no "body" outside the agency that has the authority to make decisions about the child's placement. The Foster Care Review Committee's report is submitted to the judge, but the judge does not have jurisdiction over these cases.

Children who come into care under the jurisdiction of the court are reviewed by three different systems. They are reviewed by ongoing internal agency reviews and the foster care committee. They are also reviewed by the court system. Presently there is no policy structuring uniform coordination between these systems. Each district court system's involvement in case review varies depending upon the judge's perception of his/her role. In some districts, judges are limiting temporary custody orders to six months, with a mandated review at the end of the time period. There were other districts in which children were in placement with temporary custody orders that did not have a time limit. One of the purposes of the FCRC is to bridge these two review systems. (Discussion of the foster care committee's role in the entire case review process is detailed in Section 3.2.)

All children coming into care are to have a treatment and service plan developed cooperatively between parent and social worker. The plan includes an overall placement goal and must be completed prior to placement, except in emergency situations when it is to be developed immediately after placement. The treatment plan is used to establish the case goals, review the progress towards achieving the goals and to outline both agency and parental responsibilities in achieving the goals. Treatment plans may be revised throughout a child's time in care. It is mandated by law that a court-approved treatment plan must be in place before termination of parental rights can be granted. This legal requirement for termination cases has created some variation among counties as to when the treatment plan must be developed. It is the intent of law and policy to have the treatment plan developed initially; however, some workers were not developing complete treatment plans until they were ready to file for termination of parental rights.

Initial placement decisions and treatment plans are to be reviewed at a minimum by the social worker's supervisor. In those areas in which the child protective service team is operating as a review team, each child brought into care is also reviewed by the CPS team.

After the initial review of each case, an administrative review by the social worker's supervisor and the state supervisor is to be completed every two months until the child's sixth month in care and every six months thereafter. According to local staff, the timeliness and consistency of these administrative reviews has improved since the FCRC's were established. The administrative reviews are being scheduled one month prior to the review done by the FCRC. The workers are presenting the same report for the administrative review that they present to the FCRC.

The inclusion of natural parents and children in the development of treatment plans and administrative case reviews varied by county. There was variation in the extent to which parents and children were consulted. In some instances the treatment plan was developed in conjunction with the parent and child, while in other circumstances the agency might develop the plan and simply present it to the parent and child. Parents represented by counsel and children represented by a guardian ad litem had more input into their treatment plans and case review decisions.

3.2 Dispositional Hearings Within the Case Review System

In response to the periodic review and dispositional hearing requirements of Public Law 96-272, Montana, in response to DSRS request, enacted legislation establishing Foster Care Review Committees in every judicial district. These committees are now responsible for conducting reviews, which result in non-binding recommendations. Initial training to committee members and local staff made a distinction between the purpose of the committee meetings held at the sixth, twelfth, and eighteenth month. Members and staff were told that by the eighteenth month a decision on the permanent placement of the child should be implemented, wherever possible. Interviews with committee members and local staff indicated that a distinction is not being made between the two types of proceedings. It should be noted that most committees have not had more than the six and twelve month review of a case. However, when asked if they saw a distinction between the sixth, twelfth, and eighteenth month meetings, all respondents answered "No".

3.2.1 Organization of the Foster Care Review Committees

Under state law there must be at least one Foster Care Review Committee in each judicial district in the state. In some judicial districts there are more, sometimes one in each county. As indicated in Section 2.3.3, the committee members are to be appointed by the youth court judge "in consultation with the department". Each committee is to consist of no fewer than four or more than seven members.

In practice, departmental officials prepared lists for each district youth court judge to consider when making appointments to the foster care review committee. Many judges made appointments based on the department's suggestions. Other judges made additional inquiries of committee members and made additional appointments on the suggestion they received. Some judges made appointments before consulting with the department. In some cases, additional appointments beyond the required four members were used to involve important segments of the local community or other professionals. For example, a mental health professional was included in one community and a social worker from an Indian tribe in another. The latter member was able to facilitate planning for children under tribal court jurisdiction.

The Foster Care Review Committees have not been provided with staff on a state or local level. The statute charges the department with providing guidelines to the committees for their operation and with promulgating rules for the Foster Care Review Committees. The department has done so. In effect, the department provides the staff support for the Foster Care Review Committees, scheduling cases and typing any reports or correspondence for the committee. In addition, the departmental representative on the committee often chairs the meetings. The FCRC is appointed by the judge and dependent upon the department for its functioning.

3.2.2 Scheduling of Cases and Preparation of Reports

In addition to the computor list provided by the "Evaluation Bureau" of each child due for a FCRC meeting, the district supervisor for each county keeps a tickler system. It is also the responsibility of the district supervisor to prepare the agenda and list of children to be reviewed for each FCRC meeting.

Children are to be reviewed by the six-month anniversary date of the date they entered care and each six months thereafter while the child is in care. In some cases, the six-month deadline is missed by one to two months, particularly where the county is so small there are very few children to be reviewed in a given month. In addition, this scheduling arrangement, while it meets federal requirements, is not always coordinated with the date on which a judicial review may be pending. Judicial reviews, based on temporary custody orders are being set at three, six, nine or twelve month intervals from the date of the court's disposition hearing, or shortly following the time the child was found to be a "youth in need of care".

3.2.3 Participants and Notice

Departmental regulations provide that the natural parents of the child must be notified of the FCRC and allowed to attend the meeting except when parental rights have been terminated. Local agency staff expressed little knowledge of this requirement and, in practice, it appeared that parents were not being notified of foster care review committee meetings. Parents' attorneys, in some cases, did not know meetings were being held. Social workers and some review committee members expressed considerable fears about "what would happen" if parents attended the meetings. Some expressed fear of hostility and disruption by parents, others expressed fear of "hurting" the parent by what would be said at the meeting. Steps are being taken to ensure notification of parents. In some counties the foster care review report is being revised to include a section which asks "Has the parent been notified; and if not, why not?"

Written notification of the time and place of the meeting is not a requirement. When a decision was made to notify parents or their attorneys, notice was usually given over the telephone or in person. When workers invited parents, it appeared they sometimes described the proceedings in such a way as to make it unlikely the parent would choose to attend -- "I'm going to be telling the committee why we had to put Mary in foster care to begin with. You can come if you want."

Regulations specify that the social worker on the case, his or her supervisor, and the state supervisor shall attend the meeting, and they regularly do attend. The state supervisor is often the departmental representative on the committee. The social worker and supervisor, prior to the review, are to decide which of the parties that regulations specify may attend, are actually going to be invited. In practice, it appeared that the child was not often invited, and that guardians ad litem and foster parents were occasionally but infrequently invited.

3.2.4 Procedure at Committee Meetings; Safeguards

Foster care review commitee meetings closely resemble a "staffing" of a case. One committee member chairs the meeting. This duty may rotate from week to week, or one member may stay in the position (often the department's representative). The social worker "presents" the case, summarizing the report. The committee may ask questions about the case. Others who attend are allowed to make a statement and the committee may ask them questions informally. In some cases, those in attendance, such as parents, are asked to leave before the committee considers its recommendations.

The agency is required to make certain documentation available for the committee, including:

(a) Current social information;

(b) Placement history;

(c) Treatment plan;

(d) Description of activities and observations of worker;

(e) Court orders;

(f) Available psychological and psychiatric information regarding the child/family; and

(g) Placement worker's recommendation for continued placement or return to the family.

The committee is required to address in each case the same questions the agency report has addressed. The commitee frequently answers each question "Yes" or "No" without additional comment in its report to the court.

The procedural safeguards often in place at a court proceeding are not occurring at FCRC meetings. As noted above, all parties and their attorneys are not notified of the meetings. A provision for parties to examine the agency's report prior to the day of the meeting is not happening. There is no formal opportunity to present or cross-examine witnesses. Witnesses are not sworn, nor may witnesses or parties be subpoenaed to attend. No verbatim record is kept of the proceedings. There is no requirement that the committee's report to the court be provided to the parties or their counsel.

3.2.5 Decisionmaking Authority and Role of the Committee

The foster care review committees do not have the authority to make binding decisions. Their sole statutory authority is to make a report to the court following the review of each case. However, there is no assurance the court will take any action based on the report. The court is not required to read the reports. Because there is no mandated court review following the review committee meeting and because some children are not under court jurisdiction, (i.e., those voluntarily placed in foster care by parental agreement) there is no automatic occasion on which the reports are required to be considered by the court.

There is not a formal mechanism established for the review committee to petition the court for review of a case or to allow the parties to petition for court review following receipt of the report. There is not any requirement that the court hold a hearing on cases on which the review committee and the agency disagree.

The committees themselves seemed somewhat unsure of their roles. In particular, they seemed unclear whether and to what extent it was appropriate for them to openly disagree with the social worker or supervisor presenting the case. Several members expressed concern about not wanting to create a feeling of animosity between the committee and agency staff or to make workers feel bad that they had not done a good job. Some seemed to feel it was merely their duty to report to the court what appeared to be happening on the case rather than pressing the agency to agree to change an inappropriate plan or calling the disagremeent specifically to the court's attention. In some cases, however, committees were filing majority and minority reports with the court.

There were several ways in which it seemed this relative timidity might change over time. Many cases had been reviewed only once at the time of the site visit. Some members expressed concern at seeing little change in cases they had reviewed previously when they came to them the second time. Committee members expressed concern in one case over a worker who refused to agree to change what they considered an inappropriate plan.

The committees also seemed unsure of whether the court read or took action based on their reports -- although they hoped so. Several members expressed the belief they would be able to ask the judge to hold a hearing if they strongly disagreed with the agency although none had done so.

3.2.6 Relationship to Agency

The committees reported that they rarely disagreed with the agency plan in the case -- although it appeared that this sometimes meant they agreed with the ultimate objective although they might seek faster action on the case.

Experienced workers reported that they felt they gained little from the reviews but they believed them helpful to inexperienced workers. Inexperienced workers reported they found them helpful. Some workers believed the committee should only be asking whether the child should be continued in foster care or not and that it was inappropriate to "second guess" any other aspect of the current plan. Those workers saw the committees as sometimes meddlesome.

Workers believed that some members of the committees were naive about foster care issues and the legal requirements it is necessary to meet to keep a child in foster care. Where there were regular court hearings held, workers sometimes felt that the review itself was duplicative and that the court review was more exacting.

While the agency staff may have had some minor disagreements with the committees, there did not seem to be animosity or bitterness between the FCRC and the agency. In addition, agency staff believed that the committees had resulted in better relations with the schools and probation officials and had been effective public relations in the community. They liked having informed "citizen volunteers" in the community who knew about the agency's work.

3.2.7 Relationship to the Court

The nature of the court's response to and awareness of the activities of the foster care review committees varied widely. One judge read all foster care review committee reports -- if not at once, then before the hearings she held. Another judge had forgotten he had appointed the committee and it appeared the reports were not being sent to him. He relied on the county attorney to bring any problem in the case to his attention, although it turned out the reports were not being sent to the county attorney either except in contested cases or cases with pending legal action.

In some counties, the court holds regular judicial hearings to considser whether the child should continue in foster care and related questions. Some judges used these judicial hearings to raise permanency planning issues and to determine whether the child could be returned home or whether a permanent custody (termination of parental rights) case should be filed. In these counties, the timing of the FCRC reviews and the court reviews were not coordinated.

In many cases, in one county where they were held, these court reviews were formal hearings at which the parties (except the child) and their attorneys or the guardian ad litem were all furnished with written notice of the hearing and the agency case report prior to the hearing. In some cases, counsel is appointed at that stage if one had not previously been appointed and was needed or wanted. Those present are given an opportunity to present and cross-examine witnesses through their counsel, a record is made of the hearing and a written finding or order are issued. Of course such hearings are not available to children who are in care through parental agreement alone. One judge expressed shock at realizing the number of children who were in foster care on voluntary agreement. In addition, in some cases the foster care order is simply extended by consent of the parties with the approval of the court and no real hearing is held. Of course, the court was free to set such hearings at any interval so they might be frequent or infrequent.

In some cases it appeared that the work of the court and committee were somewhat duplicative but the judge welcomed the "second opinion" of the committee. At times it appeared the new element had been added because it was mandated by law but without adjusting the rest of the system accordingly. Many participants -- both form the judicial and social work sides -- believed that reviews by the committee alone would be inadequate without court backup. One agency staff member remarked, "If they had taken my child away, I would surely want to call my witnesses and put on my case and you can't do that at the foster care review committee." However, in many counties the court does not hold regular reviews and the review committee is the only forum for review of the case.

FCRC have only been operating for nine to ten months. It is still too early to assess the full impact that committees will have on the overall foster care system. At this point emphasis has been placed on getting the committees established and functioning. Refining the process will be the next step. Section 4 outlines some issues that the personnel of Montana have had to address in implementing the FCRC. The section also includes issues that the site visitors observed while on site in Montana.

3.3 Certification Status

The State of Montana self-certified for the 427 requirements of P.L. 96-272 for 1981 and 1982. On May 17-18, 1982 an administrative review of Montana's policies, procedures, statutes and manuals were examined. On July 13-16, 1982 a review team composed of four state staff, three federal staff and a representative from Utah conducted the case record review.

Montana received conditional compliance for 1981 and the decision was withheld for 1982. The review of case records established that periodic review and dispositional hearings were not occurring for all children under the supervision of SRS. Specifically, those children placed in private care agencies, some children under the jurisdiction of the tribal court, some children under jurisdiction of the Probation Department, developmentally disabled children, and children in voluntary placements were not having periodic reviews or dispositional hearings.

The compliance review team indicated that problems with preriodic reviews and/or dispositional hearings should be resolved with implementation of the Foster Care Review Committees.

Although the law establishing foster care review committees became effective October 1981, the committees did not really begin to function in many of the counties until July of 1982.

The decision of the review team was to return to Montana after September 30, 1982 to review more records. The results of further review in Montana are not available at this time.

4. PRELIMINARY DISCUSSION OF ISSUES

Montana has implemented the FCRC system to augment the judicial review of children in foster care. It is a mechanism to ensure that all children under the supervision of the agency are reviewed. The FCRC is also seen as a vehicle to coordinate the agency and judicial systems provision of services to children in care.

The system is in a developmental stage, however. The following issues within Montana reflect the transitional nature of the FCRC's current operating status.

4.1 Implementation

Judges' views of the role of FCRC are not consistent throughout the state. State personnel indicated that sufficient orientation has not been provided for the judges. In many counties it was left to the local county welfare offices to inform judges of the FCRC procedure once the law had been passed.

During our visit, DSRS staff indicated that increased training and orientation for the judiciary is needed, in order to clarify the role of the committees.

4.2 Structure and Organization of the FCRC

The Foster Care Review Committee is appointed by the judge but is very closely tied to the agency. The agency is responsible for promulgating rules, scheduling the meetings, providing backup staff functions, and often chairing the committee meetings. This organization and structure brings up the question: Can a committee so closely tied to the agency provide an objective review of the agency's recommendations?

The FCRC is structured to be tied into individual judicial districts. The functioning of the committee is based on state regulation. The committees do not have a coordinated organization of their own. There appears to be a need for a vehicle which will allow individual committees to target common foster care review system problems that may occur.

4.3 Procedural Safeguards

Notifications

Although administrative rule mandates that parents be notified of FCRC meetings, this is not happening on a consistent basis throughout the state. To ensure that notification does occur, required written notice might be considered. Regulations specify that other parties (i.e., foster parents, children of appropriate ages, guardian ad litems) may receive notification. Again, this is happening on a very inconsistent basis throughout the state.

Due Process at the FCRC Meeting

The FCRC is to augment judicial review for children in foster care. At this time, the FCRC meetings are conducted like a staffing rather than a hearing process. Although in some ways the attention given to a case may exceed a courtroom proceeding, the due process rights of individuals are not provided on a formal basis. There currently are no provisions for participants to appear with counsel or to present and cross-examine witnesses. A verbatim record of the proceedings is not taking place, and parents are not provided with written findings and conclusions.

Legal Representation

Legal representation for parents and children is not always provided. There is a lack of appointed legal counsel from the time a child enters care. State law does require guardian ad litems to be appointed for children, but due to lack of funding, this is not always occurring. Parents are advised of their right to legal counsel, but the resources for them to receive counsel are not always available. The judges interviewed believed that attorneys were only necessary for contested cases.

4.4 Authority of the FCRC

The foster care review committee has the authority to make recommendations to the court but not binding decisions. This becomes an issue because there is no requirement that the court actually review and/or act on the FCRC recommendations. A mechanism to trigger court action when there is disagreement between agency, committee, and involved parties is needed.

The FCRC committee members did not always seem to possess a complete understanding of their role. Members seemed uncertain about their authority to disagree with the agency or to confront workers about the information provided in the foster care review report.

4.5 Training

All people interviewed indicated a further need for training. Some of the training issues included:

- Legal issues;
- Permanency planning issues;
- Role of the FCRC; and
- Authority of the FCRC.

It was felt that training was necessary for court, agency, legal, and foster care committee personnel.

4.6 Court/Agency Relations

Coordination and communication between the courts and agency must be conducted at the local level. This becomes confusing in that district court jurisdictions are different than agency districts. The problem becomes magnified because there is not a central court administration. As court and agency interaction is becoming more interdependent, a need for a formal communication mechanism is necessary.

4.7 Funding

Court and agency personnel indicated a need for funding to be able to provide the mechanisms and services necessary to ensure permanent placements for children.

4.8 Service Delivery

The following issues pertain to aspects of Montana's case review policy which may be acting as deterrents to permanent placement decisions for children:

- There was concern over the lack of court jurisdiction over children voluntarily placed in care for periods exceeding six months. Although these children are reviewed by the FCRC, only the agency is making a decision about their placement.
- The use of the Temporary Investigative Authority (TIA) order in cases where it would have initially been possible to go for temporary custody is another issue. The TIA could unnecessarily prolong a child's time in care. A closer examination of how the TIA is actually being used is necessary.
- Expansion of the options for permanent placement of children in care might be explored. Some suggestions include a statute providing for permanent long-term care and for guardian subsidy.
- By law, a petition for termination can not be filed without first pursuing a treatment plan. For those cases in which the agency knows they are going to pursue termination from the onset, a provision for modifying the treatment plan requirement is necessary.

5. NORTH DAKOTA

The purpose of this report is to give a description of the overall organization and structure of the child welfare and juvenile judicial systems in the State of North Dakota, and to outline how the dispositional hearing is functioning within the state's case review system. During March 21 through April 1, 1983 a site visit to North Dakota was conducted to assess the dispositional hearing proceedings for children in foster care. Information was collected through review of applicable state law, policy and available statistical reports, and through interviews with agency and court personnel and legal counsel. The counties visited include:

Large County -- Cass
Medium County -- Mandane
Small County -- Dickey

1. STATE BACKGROUND

1.1 Agency

North Dakota's foster care program is state supervised and county administrered. The Office of Human Services, North Dakota Department of Human Services, is designated by North Dakota Century Code to direct and supervise the County Social Service Boards. The county social service boards carry the responsibility for the planning and delivery of services to children in foster care.

There are two levels of state administration: central office and area office. Policy and procedures are developed in the central office by the Children and Family Services Unit. There are eight area regional offices which oversee the implementation of these regulations by the local offices. The directors of the Regional Human Service offices report to the director of the Office of Human Services. The administrator of the Children and Family Services Unit does not have line authority over the directors of the regional human services offices.

There are 53 counties in North Dakota, each with a county social service board responsible for delivering services through locally administered agencies. The director of each local office is hired by the social service board and has line authority over the social workers at the local office. The eight area regional human service directors supervise and direct the county offices and provide services not available at the local office.

County agencies accept custody and have authority to place children removed from their parent's custody. Approximately 33 of the counties have fewer than ten children in foster care. There are about 90 full-time or part-time social workers, with foster care case responsibilities throughout the state.

Support for children in foster care is provided through federal, state and county funds. The match for federal funds for AFDC/FC children is 75 percent state and 25 percent county. Regular foster care is provided for children not eligible for Title IV match. At one time, services for these children were totally county funded. Presently, the counties must certify to the state and state funds pay for 75 percent of the cost.

1.1.1 Service Population

Currently, children under the supervision of the county agencies include children placed through voluntary parental entrustment, deprived children (abuse or neglect), status offenders and delinquent children placed in foster care.

The average number of children in care per month has been fairly consistent over the past three years:

1980 monthly average	543
1981 monthly average	556
1982 monthly average	590

On March 1, 1983, 255 of the total children in care had been there over 18 months. The average length of time of all children in care during fiscal year 1981-82 was 22.5 months. Recidivism rate by average length of time in care was calculated for two counties. The county with the lowest average length of time in care, eight months, had a recidivism rate of 10 percent, while the county with one of the highest average lengths of time in care, 24 months, had a recidivism rate of 25 percent. The unduplicated count of the number of children who left care, by reason, for 1982 is as follows:

Placed for adoption	87
Returned to parents	269
Returned to relatives	29
Care continued with private funds	6
Supported by other public program	8
In-state institution (detention or state hospital)	23
Independent living	41
Death of child	2
Other	28

In 1982, 136 of the cases that were closed were reopened.

For those children who were in care as of March, 1983, there was an average of 1.3 placements per child since their most recent opening. When number of placements were calculated from time of initial entry, the average number of placements rose slightly to 1.5.

1.1.2 Native American Population

It is estimated that approximately 30 percent of the children in care each month are Indian. The percent of Indian children in care was reported to be disproportionately high compared to the percent of the state population that is Indian. In accordance with the Indian Child Welfare Act of 1978, Indian tribes have jurisdiction over Indian children on and off the reservation. The tribe can maintain jurisdiction or relinquish jurisdiction. If jurisdiction is maintained, it becomes the responsibility of the tribal council's child welfare staff to make determinations about the placement of Indian children. Maintenance payments to the foster family are made by either the state or the Bureau of Indian Affairs (BIA). When payment is made by the BIA, the child is not subject to local permanency planning committee proceedings or dispositional hearing proceedings. Efforts are being made to have tribal councils establish their own periodic reviews and dispositional hearing proceedings for children receiving maintenance payments from DSRS.

If the tribal court relinquishes jurisdiction, these cases then come under the jurisdiction of the local county social services board and are subject to permanency planning committee reviews and dispositional hearings.

1.2. The Judicial System

The North Dakota judicial system consists of the North Dakota Supreme Court which hears appeals, and both district and county courts at the trial court level.

Judicial districts consist of several counties. More populous judicial districts may have several district judges.

District judges are elected for six-year terms and are state employees.

Juvenile court jurisdiction is in the district courts and covers cases involving deprived, delinquent and unruly children as well as terminations of parental rights. The district court also has jurisdiction over adoptions and domestic relations matters but the county court hears guardianship matters.

One district judge per judicial district is designated "presiding juvenile court judge" and is responsible for juvenile court administration in the district. All or several district court judges may actually share hearing juvenile cases.

In addition, the court may appoint one or more juvenile supervisors, probation officers and clerical staff for the "juvenile court". The juvenile supervisor and the referee may be involved in issuing custody orders and/or hearing cases. Juvenile supervisors are non-lawyers who in many ways function like probation officers, although they may also issue orders authorizing taking a child into custody in an emergency. Referees, on the other hand, are required to be attorneys. However, when the provision was passed to establish attorney referees, many non-lawyer juvenile supervisors were "grandfathered in" as referees. As a result, many juvenile referees are still non-lawyers. Referees may hear any case or class of cases when directed to do so by the presiding juvenile court judges. They routinely hear the bulk of all juvenile cases in many judicial districts. They hear many deprivation cases, including emergency orders and foster care reviews. More frequently district court judges, rather than referees, hear termination of parental rights cases. Parties may have any matter heard by a judge rather than a referee, on request, and may obtain review of a referee's recommended decision by a judge. The referee's recommended decisions become the findings and orders of the court on confirmation by a judge. Proceedings before the referee, except for "informal adjustments", are matters of record.

Referees also serve administrative functions with respect to juvenile court functions in some judicial districts.

Under a change in legislation that went into effect on January 1, 1983, the North Dakota court system became a unified court system. All district court judges, referees, juvenile supervisors, probation officers, as well as costs of the district court are paid for by the state. Previously, many of the costs of the juvenile court functions (i.e., operating costs and salaries for juvenile referees) were apportioned among the counties in the district.

At approximately the same time legislation was passed transferring full budgetary responsibility for the juvenile court functions to the state, the Court Administrator's office, located in the North Dakota Supreme Court, added a staff member with responsibility for juvenile court matters. He is responsible for planning, training of juvenile court personnel, coordination, and such special tasks as preparation of forms to be used by juvenile courts throughout the state.

There is a statewide Judicial Council in which all judges of courts of record are members. There is a juvenile committee of the Council. The Council can take positions on matters of concern to the judiciary. Many referees and supervisors, as well as other professionls involved in the juvenile court system, are members of the North Dakota Youth Justice Association.

1.3 Judicial-Agency Relationship

At the state level, a working relationship has been developed between state-level DHS staff and the state judicial system. DHS has had a Judicial Advisory Council to the agency for some years. The committee is comprised of interested juvenile court judges and agency staff. The group meets at least twice a year to "advise" the agency on legal matters and upcoming legislative proposals pertaining to juvenile court cases. The meeting also serves as a forum for the agency to discuss new internal developments that will affect the judiciary and vice versa. Agency staff believed the council has been very useful in establishing lines of communication.

The establishment of a staff member responsible for juvenile court matters in the state supreme court has created another mechanism for coordination between DHS and the judiciary. There is regular communication between the state court staff member and DHS staff, especially legal counsel, on matters ranging from development of statewide forms to training for judges and probation officers.

At the county level, there is informal coordination between agency and court personnel on both individual cases and systems issues. In one county visited, the county director stated, "I go over about twice a month and have coffee with the referee to see if he has any problems with our staff." Another county director indicated, "The referee's office is downstairs from mine, so we talk all the time."

County-level coordination with the courts is also being promoted through the permanency planning committees. These committees, established to review all children under the supervision of DHS, encourage representation from the courts.

2. LAW AND POLICY

This section describes the North Dakota laws and written policy which govern the procedures for establishing custody and ongoing agency and judicial review of children in foster care. Section 3 will outline how these procedures are functioning.

2.1 The Law

A description of the 18-month dispositional hearing requirement must be considered within the context of the entire judicial role in foster care. Juvenile law governing custody and ongoing judicial reviews is found in the North Dakota Century Code.

2.1.1 Initial Custody

A child may be taken into custody on the order of the court or on an emergency basis by a law enforcement officer or juvenile supervisor if there are reasonable grounds to believe that the child is suffering from illness or injury, or that the child is in immediate danger. The child must be brought to court promptly, unless medical attention is required, and may be held only if a designated court officer finds that shelter care is necessary for the child's protection. If there is a need, a petition alleging the child is deprived must be filed promptly and a hearing must be held within 96 hours to determine whether the child must be held for his protection pending adjudication. Both parents and child must be notified of the hearing. They must be notified of their right to counsel prior to the commencement of the hearing. A parent or guardian who was not notified may obtain a rehearing.

2.1.2 Adjudicaton/Disposition

The grounds for finding a child to be deprived are that the child:

a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of his parents, guardian, or other custodian;

b. Has been placed for care or adoption in violation of law; or

c. Has been abandoned by his parents, guardian, or other custodian.

The law establishing the time frames for the adjudication hearing for deprived children is interpreted differently throughout the state. Some judges in the state believe that North Dakota Century Code 27-20-22 which requires that the adjudication take place within 10 days for children who are "in detention" applies in the cases of deprived children as well as delinquent juveniles. Others believe that because deprived children are in "shelter care" rather than "detention", their adjudication must take place within 30 days as do all other adjudications of deprived children maintained in their homes. The summons to the parents for the adjudication hearing must state that a party is entitled to counsel in the proceedings and to appointment of counsel if unable to pay. The adjudication is recorded and the state must prove allegations not admitted.

Disposition is frequently held the same day as the adjudication. No special pre-disposition report is required. The court may allow the child to remain at home under conditions and protective supervision, or transfer temporary custody to an individual (the county director) or public or private agency. The court may require the parents or guardian to participate in the treatment plan. Once legal custody is given to an individual or the agency, placement of the child is the responsibility of that individual or agency.

2.1.3 Extension Hearings ("Dispositonal" Hearings)

Orders of disposition placing deprived children in foster care may not last for more than 18 months. (North Dakota Century Code 27-20-36.) In order to extend the order, a hearing must be held before the expiration of the order on the court's motion or the motion of a party to extend. These hearings on extension of the foster care order serve to meet the Public Law 96-272 dispositional hearing requirement.

Parties must be given reasonable notice of the hearing and an opportunity to be heard. In order to extend the order, the court must find that the extension is necessary to accomplish the purposes of the original order. The extension also may not exceed 18 months.

If the child is under ten at the time of the extension hearing, the court is required to determine if the child is adoptable, grounds for termination of parental right exist, and if termination of parental rights is in the child's best interests. If all of these conditions are met, the notice of the extension hearing must inform the parties that the court will make these determinations. If the court determines at the hearing that these conditions are met, the court must make an order terminating parental rights. There is a certain circularity here, in that one cannot know if the conditions are met without holding a hearing to determine whether they are. As a result, it is not entirely clear whether the law requires a separate petition and hearing on termination of parental right, or allows the extension hearing itself to be used for that purpose without an additional petitiion.

If parental rights are to be terminated, it must be on one of the following grounds:

a. The parent has abandoned the child;

b. The child is a deprived child and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; or

c. The written consent of the parent acknowledged before the court has been given.

2.1.4 Other Judicial Review

Other regularly scheduled judicial review is not required by statute. State law does provide for modification or vacation of orders of disposition on the basis of changed circumstances, following a hearing on the question.

2.1.5 Counsel

North Dakota law provides that except where there is specific exception, a party is entitled to representation by legal counsel "at all stages of any proceedings under the juvenile court act". Counsel must be provided for "needy persons". If a party appears without counsel, the court must determine whether he knows his right to counsel and to have counsel appointed.

A proceeding may be continued to allow a party to obtain counsel. The summons must inform parties of their right to counsel. One section of the North Dakota Century Code provides that "counsel must be provided for a child not represented by his parent, guardian or custodian", while another provides that the court shall appoint a guardian ad litem for a child if he has no parents, his interests conflict with theirs or his interests require a guardian.

2.2 Policy

The North Dakota Department of Human Services Manual states that the permanency planning philosophy "is the cornerstone for the delivery of services in the Foster Care for Children Program in North Dakota". This focus began about four years ago when staff of the Oregon Permanency Planning Project provided training for all of North Dakota's caseworkers. Written policy for foster care services has been revised within the last two years to emphasize permanency planning procedures for delivery of services. To ensure that children are receiving services consistent with the permanency planning philosophy, permanency planning committees were implemented.

2.2.1 Referral for Foster Care Placement

A child enters the foster care system either by order of the court or through a voluntary entrustment agreement between parents and the agency. Children entering under court order include "deprived children" (primarily due to abuse or neglect), children "in need of care" (infants awaiting adoption, handicapped children) and delinquent/unruly children. Delinquent/unruly children are generally under the supervision of the State

Youth Authority (SYA). However, delinquent/unruly children who will potentially enter or are now placed in foster care become the financial responsibility of the local county welfare office, and therefore are included in permanency planning reviews. Children placed into care under voluntary agreement may not be placed for longer than 45 days without the approval of the area supervisor and/or permanency planning committee. A parental agreement, which stipulates the parental responsibilities and the time frame of the agreement, is signed by the child's parents and an agency representative.

Agency policies for removal and court procedures are governed by the statutes outlined in Section 2.1. All agency petitions to the court must be submitted by a state's attorney.

2.2.2 Case Review

Once a child has entered foster care, a case plan must be developed and the review of the child's placement is to be conducted by a permanency planning committee (PPC). The PPC is not mandated by law. The policies for the PPC are found in the North Dakota Department of Human Services Manual and each county social service board is encouraged to implement a permanency planning committee. Presently, the permanency planning committee approach is being implemented by almost all of the county boards. In some counties, where the foster care population is very small, a county may participate in an areawide committee, while in other areas a less formalized structure of permanency planning may be occurring.

2.2.2.1 Case Plan

A plan for the child is to be developed within the first 30 days of placement and prior to the initial permanency planning committee meeting. The plan is to include:

- Primary reason for care;
- Circumstances which led to the removal of the child;
- Attempts to prevent placement;
- Court-related issues;
- Case plan goal;
- Type of placement (explanation if child is not placed in family foster home or outside of geographical region);
- Proposed goal accomplishment date; and
- Treatment plan.

The plan is to be signed by the parent, child (if appropriate), case manager, and immediate supervisor. The case plan report is to be presented to the permanency planning committee at the initial review meeting.

2.2.2.2 Permanency Planning Committee

The permanency planning committee is the key ingredient in the implementation of permanency planning in foster care. At a minimum, the function of the committee is to:

- Periodically review every child in foster care;
- Determine, with the approval of the regional supervisor, the level of specialized family foster care payments; and
- Approve, with the authorization of the regional supervisor, the foster care placement into any in-state or out-of-state group or residential child care facility.

Organization

The committee is selected by the regional area supervisor and county social service board director. Policy outlines that permanent membership should include but is not limited to:

- Regional foster care supervisor;
- County social service board director or designee;
- A treatment or therapy person; and
- Juvenile court supervisor or other court representative.

The case manager is expected to attend on a case specific basis, and is responsible for ensuring that any "new" case is brought before the committee.

The chairperson of the committee is usually the regional supervisor. However, any member of the committee can serve as a chairperson with the approval of the regional supervisor.

Scheduling

The frequency that a child is reviewed depends on how long the child has been in foster care. For those children in foster care two years or less, the committee will review the case at least every three months. After a child has been in foster care for two years or more, the committee must review the placement at a minimum of every six months. A committee member may request that a case be reviewed at any time.

Notification and Participation

Aside from permanent members, policy states that members of the committee, on a case specific basis, could include:

- Foster parent;
- A school official;
- County or city health nurse;
- Others having an appropriate interest in the child or family;
- Parents or legal guardian; and
- Foster child.

It is the case manager's decision as to when natural parents/ guardians and foster children are to be invited.

Duties and Procedures

An initial committee meeting is to be held for every child that enters foster care. "The Permanency Planning Committee Initial Report" is to be completed by the case manager prior to the meeting and presented at the meeting. The information included in this report was discussed in Section 2.2.2.1. The committee is to serve in an advisory manner in relation to the case plan. Followup committee meetings are to focus on progress towards the established goal and evaluation of the implementation of the treatment plan.

The committee completes a "Permanency Planning Committee Progress Report" for each child reviewed.

Authority

The agency having legal custody of the child has the final responsibility for the case plan and what happens to the child. The committee serves as an advisory body. The committee recommendations are formulated on a consensus basis. A copy of committee recommendations are sent to the:

- Case manager;
- County social service board;
- Regional human service center in physical county of child; and
- Court.

2.2.2.3 Child Protection Service Teams

In addition to the permanency planning committees, some counties of North Dakota have implemented a child protection service team. The purpose of this team is to coordinate the services of agencies dealing with child abuse and neglect and to assist the case manager in developing treatment plans for children and their families. These teams are interdisciplinary and membership may include representatives from health, education, law enforcement, court, and social service agencies.

3. FUNCTIONING OF THE DISPOSITIONAL HEARING WITHIN THE CASE SYSTEM REVIEW

As outlined in Section 2, policies have been established to structure the review of children in foster care. Actual implementation of these policies varies among the counties. This section first presents a brief overview of the results of North Dakota's compliance audit and then focuses on how case review and dispositional hearing reviews are functioning.

3.1 Certification Status

The State of North Dakota self-certified for the 427 requirements of P.L. 96-272 for 1981 and 1982. During May 10-11, an administrative review of North Dakota's policies, procedures, statutes and manuals was conducted. During September 13-17, 1982, a review of case records was completed. North Dakota was found in compliance for 1981 and 1982.

It was found that the following issues for case review and dispositional hearings needed further attention:

- Parental participation at the permanency planning committee reviews;
- Timeliness of dispositional hearings, especially hearings held at tribal court; and
- "Periodically thereafter" dispositional hearings for children in long-term foster care were not always being conducted.

3.2 Functioning of the Case Review System

Although the implementation of permanency planning committees is in varying stages throughout the counties of North Dakota, the philosophy of permanency planning is prevalent in the attitudes of the case managers. During the interviews conducted on the site visits, it was apparent that the permanent planning philosophy has been integrated into the case manager's delivery of services. They appeared to approach each case with the goal of establishing a permanent outcome for the child. The following will describe how the permancy planning committees are functioning.

Implementation and Organization

Agency staff indicated that in those counties in which an interdisciplinary approach to providing services had already been established it was easier to develop permanency planning committees.

Permanent membership on committees varied throughout the counties. One county's committee membership included an assistant state's attorney while other county membership consisted solely of the area supervisor, juvenile supervisor and worker. Regional supervisors indicated that it was not always possible to obtain court representation on the committee. In some of the smaller districts, referees felt it was a conflict of interest to sit on the committee. Some regional supervisors suggested that it would be easier to obtain court participation if it was mandated by law that the court provide a representative.

Scheduling

Although the area supervisor has overall responsibility for the functioning of the committees, it is the responsibility of the local social service boards to develop their method of identifying when a committee review is due. This ranged from individual workers keeping calendars of due dates for their individual cases, to the supervisor maintaining an overall calendar of all cases due for review.

The main deterent to conducting reviews in a timely manner seemed to be how often the review committee would schedule its meetings. In counties where meetings were held on a weekly basis, all children coming into care were reviewed consistently. Consistent review for all children did not necessarily occur when committees met less often.

Notification and Participation

Natural parents are not notified of committee meeting on a consistent basis throughout the state. In some counties, the workers indicated that the parents did not need to be informed of the committee meetings for the worker presented the parent's views. In other counties, the parents were verbally notified of the meetings, but were not provided written notificaiton. In one county, the workers had been consistently inviting parents since January, 1982. The workers indicated that parents were coming to the meeting and their presence provided very positive results. The worker indicated that the parent raised concerns that she had not previously considered.

Other participation at the permanency planning committee also varies by county. Foster parents are not invited on a consistent basis. Recently a foster care grievance bill was passed by the North Dakota Legislature. The bill provides for foster parents to have a grievance procedure to object to any decision made by the Department of Human Services or County Social Service Board which substantially affects the foster parent or the needs of the foster child. By including foster parents in the permanency planning committees, dissenting opinions could be handled from the beginning.

Procedures and Authority

The extent of the review at a committee meeting also varies from county to county. In some counties, the review is conducted as a complete staffing in which all aspects of the case are scrutinized. In other counties, the reviews are handled in a perfunctory manner.

One of the main concerns of workers and supervisors about notifying parents of committee meetings was that it would affect the length of time it would take to conduct a meeting.

Although the authority of the committee is advisory, the area supervisor usually chairs the committee and does oversee service delivery at the county level.

3.3 The Functioning of the Dispositional Hearings

Prior to 1981, hearings on extension of foster care orders were required to be held at two-year intervals. Effective in 1981, in response to Public Law 96-272, the statute was changed to require that these hearings be held at 18-month intervals.

3.3.1 Organization

Extension hearings are conducted by a district court judge or by a referee, and this varies from county to county and from case to case. Sometimes a judge would hear an extension hearing in a case in which he heard the original adjudication. At other times, the referee would ask that the judge hear a particuarly sticky case that was likely to end up with extended litigation, as it was believed the losing party would ask for a rehearing by a judge anyway. Parties might ask that the hearing be held by the judge. And, in one county, where the two referees each sat on some permanency planning committees, the referees traded off extension hearings to ensure they did not hear the extension hearing on a case in which they had sat on the permanency planning committee's reviews.

3.3.2 Scheduling, Petitioning and Notification

The exact method of scheduling cases varied in the three counties we visited. In Cass County, the court generally set reviews at much sooner than 18 months and at one of those earlier hearings would set an extension hearing date. The social services agency, a probation officer and the chief clerk also all had 18-month tickler systems to ensure that cases were not missed.

In Dickey County, the social services agency notifies the court approximately 45 days before expiration of the order, The referee then schedules the case, and the state's attorney prepares a petition and summons to notify the other parties.

In Morton County, the social service agency attempts to notify the court two to six months before expiration of an order so that a date may be scheduled. The court does not maintain an independent tickler system. At times the agency overlooks a case until too late to notify all parties and it is necessary to enter an emergency extension for 30 days. Agency personnel also indicated that emergency extensions had to be entered because of the state's attorney's backlog of petitions to be written. When the date is set, the state's attorney will have notice of the hearing served on the other parties.

Because the order for foster care actually expires at the end of 18 months, it was the practice in the counties visited to actually file a new petition for an extension of the foster care order. Where this was done, the petition stated a basis for a finding that the deprivation continues to exist or that the extension is necessary to accomplish the purposes of the original order. The petition includes statements of the facts of the case which justify the finding.

The petition is then personally served on the parents with a summons to appear on the day of the extension hearing. Copies are apparently sent to the parents' attorney and child's guardian ad litem. At least one county indicated that children over the age of 14 were also notified of the hearing.

If the agency planned to recommend continuation in foster care, they were expected to provide evidence as to the necessity for the continuation. If the agency felt it was appropriate for the child to be returned home, they would often let the court order expire at 18 months. It was apparently unusual to seek an extension of the order in order to continue court jurisdiction over the child for purposes of protective supervision while the child was is the home. However, dependency was often continued on children returned home before the expiration of the court order. The fact that it took extra activity to seek to extend foster care while not seeking an extension resulted in an end to court jurisdiction may have had the beneficial effect of resulting in decisions to return the children home in a number of cases. There was no mechanism mentioned for a guardian ad litem to seek extended jurisdiction if the agency did not seek to do so.

One difficulty posed by this system is that there is an unusual amount of "legal" paperwork required in order to bring about a hearing. While in most states the agency makes a written report and a simple notice of hearing is mailed, in North Dakota counties where petitions were used, the state's attorney staff, rather than agency or court staff, had to draft a petition and prepare a summons and see that one summons was personally served (i.e., not by mail). This appeared to create backlog in some areas.

3.3.3 Reports

State statute did not require that DHS file reports with the court at any point in the court process, including at the time of the extension hearing. As a matter of routine, it appeared that the petition for the extension itself served some of the functions of a report.

In some areas it was customary for the agency to file periodic reports with the court although they were not required by law. In addition, judges or referees sometimes required periodic reports from DHS in particular cases or set earlier judicial reviews, at three or six-month intervals, and asked for reports in conjuction with those reviews. Judges and referees also mentioned personal conversations with social workers on cases, although several reported feeling uncomfortable with this practice.

Reports from the permanency planning committee reviews were not routinely sent to the court, although state policy provides that they should be. More frequently, the "court representative" on the permanency planning committee served as a communications link between committee and court. Several referees expressed the belief that a probation officer on the committee would report to them if an especially problematic case were heard by the permanency planning committee. It was not clear how often cases were actually discussed but it appears that in some cases they were. It should be noted that while these informal communications may smooth the way to decisions, they also may amount to ex parte communications which exclude some of the necessary parties from the court's deliberation.

3.3.4 Participation and Conduct of Hearings

It appeared that parents, or mothers, attend extension hearings with some regularity. Foster parents are not invited and generally do not attend. Counsel for parents and children generally are present, as are the state's attorney and caseworker. Older children only sometimes attend.

Strong attendance by parents may be due both to clear notification and serving summonses, and to the fact that parents are routinely represented by counsel.

The general rule in counties we visited was to make a fairly formal hearing available to parties. The full hearing would include opportunity to present and cross-examine witness, representation by counsel, a record of the proceedings, and written findings. Two counties reported that their extension hearings were this formal in 50-80 percent of their cases, and an additional substantial percentage of cases had parties present, presenting their views through counsel. Additional cases were resolved by agreement. Those counties appeared to have adequate referee staff. In the county in which there had been a cutback in referee staff, witnesses were presented in only 5 percent of cases, an additional 20 percent involved presentation of opposing views, and 50 percent proceeded by agreement of the parties. (Of course, it may be that agreement of the parties was reached after full and thorough negotiation and represented adequate handling of the cases.) This same county reported that no hearing might be held if the parents had abandoned the child and the guardian ad litem agreed to the extension and did not want to hold a review.

3.3.5 Legal Representation

Parties are routinely, although not inevitably, represented by counsel. Children were regularly represented by an attorney guardian ad litem. Parents were represented by counsel unless they had declined counsel at earlier stages of the proceeding. Even then, judges and referees reported asking them if they wanted counsel at the hearing and expressed a strong preference for parents to be represented.

Counsel were provided by different means. In one county, children were represented by the public defender while parents' counsel were appointed from an appointments list. In another, two law firms were on contract with the court to handle juvenile matters and alternated representing parents and children. In other counties, courts simply maintained lists of attorneys willing to accept appointment to these cases.

The agency is represented by staff of the state's attorney's office. The state's attorney is an elected position. Additional staff are employed by the state's attorney. Some complaints were heard about more junior state's attorneys being assigned to handle juvenile matters and lack of interest in these cases by the elected state's attorneys. But in at least one instance, on an experimental basis, the state DHS funded a county agency to pay the salary of an additional assistant state's attorney who would specialize in juvenile matters. All interviewed reported great satisfaction with the experiment. Agency staff reported they began winning appeals and the counties involved had decided to continue to pay the additional salary out of county funds.

3.3.6 Standards for Decisionmaking, Authority of the Court

In order to continue foster care, courts had to find that deprivation continued to exist and that the purposes of the original order had not been met. In addition, the statute directs that for children under ten, the court must determine whether the child is adoptable, whether grounds for termination exist, and whether termination is in the child's best interests. This latter provision did not seem to be stirctly enforced.

Some judges and referees did not refer to the provision at all. Others believed a separate petition to terminate or a specific notice of intent to terminate was required in order to be able to consider termination at the extension hearing. Making this decision and filing such a petition was generally seen to be the responsibility of the county attorney, even when the court was eager and willing to terminate rights in a particular case. The court generally did not believe it had any independent responsibility to consider the matter and to direct the agency to file a termination petition. Several judges and referees did express the view that they had the authority to direct the agency to commence termination of parental rights proceedings. None reported doing so frequently, but some indicated a theoretical willingness to do so in an appropriate case. One county reported an arrangement to circumvent that point of the law in cases where the agency believed termination was not appropriate, by getting parents to agree to an extension of foster care in return for an agency not seeking termination and then not holding a hearing because the matter had been agreed to on stipulation.

Several judges and referees expressed concern about the 18-month hearing as a more important decision point than earlier reviews set by the court. Several expressed the view that most cases could be and usually were resolved before the 18-month point, but that they took it as a serious problem if the case had gotten to the 18-month point and had not been resolved. They did not believe there was a legal obligation to make a final decision on how the case would proceed at that point, even with the statutory provision requiring consideration of termination at that point for children ten and under.

4. PRELIMINARY DISCUSSION OF ISSUES

North Dakota's foster care review system, consisting of permanency planning committees and judicial extension hearings, has been in operation for several years. This section will outline issues about the case review system which have been identified by personnel in North Dakota and observations made during the site vist.

4.1 Implementation

As stated earlier, the operations of permanency planning committees varies by county. One of the reasons cited for the variation was the absence of state law regulating the development and operations of the committees. It was stated by agency personnel that it is difficult to implement uniform procedures in a county administered program without a state law.

Implementation of uniform juvenile court procedures has been enhanced with the establishment of a statewide uniform court and a staff member at the state supreme court responsible for statewide coordination of juvenile court issues.

4.2 Training

During the site visit, it was apparent that social workers had incorporated the permanency planning philosophy into their delivery of service. When questioned as to how this occurred, workers cited specific training sessions that had been provided for their delivery of service. Agency workers did state a need for further training in legal and court procedures. There was consensus among workers, attorneys, judges and referees that training on permanency planning was needed for legal and judicial staff.

4.3 Procedural Safeguards

Notification

Court procedures assured the notification and participation of parents' and children's rights for extension hearings; however, notification of parties for permanency planning committees was inconsistent throughout the state. State agency personnel indicated that they needed to ensure that notification of parents took place and efforts were being made to have this policy incorporated throughout the state. However, discussion with county personnel during the site visit indicated that there was discrepency throughout the state about notifying parents to attend permanency planning committee meetings and state agency personnel have their task cut out for them.

Inclusion of Parents in Visitation and Placement Divisions

Change in visitation plans for parents are generally handled through verbal notification. If the visitation plan has been included in the court order, any changes must be approved through the court. There is not a consistent statewide policy on notifying and including parents in visitation decisions.

Once a child has been placed in the custody of the local agency, placement decisions are the responsibility of the agency. Parents receive only verbal notification of a change in placement for their child.

4.4 Relationship of Permanency Planning Committee and the Court

The permanency planning committee operates in an advisory capacity to the agency. Committee recommendations are reached through consensus of the members. As the agency sits on the committee, it is expected that recommendations will be implemented; however, there is not a procedure established to ensure that this occurs. Policy does stipulate that a copy of the committee report be submitted to the court but this does not always happen. Also, there is not a formal mechanism established for the committee to petition the court for the review of a case. By having the permanency planning committee advise the agency without a formal mechanism for court involvement, there is the potential for the recommendations of the committee to go unheeded.

4.5 Indian Population

There is tremendous concern among agency personnel about the predicament they are currently being placed in by the federal government. Agency staff indicated that the state agencies are being held responsible for ensuring that tribal services meet the 427 requirements, yet the state agency does not have the authority to make it happen. Agency personnel also indicated that money for implementing adequate services on the reservations is not available. Currently, the local agencies are developing agreements with the tribes. However, this is a slow and arduous process, for there are prejudices and lack of trust on both sides.

4.6 Decisionmaking Standards and Court Authority

It is not clear that the 18-month hearing is clearly regarded by the courts as a decisionmaking point on the child's future permanent home. Rather, in many cases, the decision is simply whether to continue the child in foster care or not. This is true despite a statutory guideline that appears to require specific consideration of termination of parental rights for children under the age of ten who cannot be returned home at 18 months. Judges and referees did generally believe they had the authority to order the agency to proceed with a termination of parental rights petition or return the child home but did not seem to feel compelled to do so at any specific time period. As a result, it is not clear that actual decisions about the child's permanent home are necessarily made within 18 months.

6. ARIZONA

The purpose of this report is to give a description of the overall organization and structure of the child welfare and juvenile judicial systems in the State of Arizona, and to outline how the dispositional hearing is functioning within the case review system. As the foster care review board plays an integral role in the overall case review and dispositional hearing process, its overall structure and functioning will also be included in this report. During February 28 through March 4, 1983, a site visit to Arizona was conducted to assess the dispositional hearing proceedings for children in foster care. Information was collected through review of applicable state law, policy, and available statistical reports, and through interviews with agency and court personnel, foster care review board members and legal counsel. The counties visited were:

Large County -- Maricopa
Medium County -- Pima
Small County -- Yavapai

1. STATE BACKGROUND

1.1 Agency

The Arizona Department of Economic Security (DES), through the Administration for Children, Youth and Families (ACYF), has statewide responsibility for child welfare activities. Arizona's child welfare program is state administered with services provided through six district offices. Each district has a program manager who reports directly to the state program administrator of ACYF.

The ACYF central office, in conjunction with the six district program managers, is responsible for developing program and policies which set service standards for children and their families. Services are delivered through the local offices in each of the districts. Approximately 181 social workers have foster care case responsibilities.

Currently, funding for foster care services for all children is funnelled through ACYF, however foster care service delivery to developmentally disabled children is also provided by the Division of Developmental Disabilities. The Division of Developmental Disabilities is within DES and works closely with ACYF in developing policies and procedures for children in foster care. Children within both administrations are subject to the same external review procedures (i.e., foster care review boards and judicial review).

Foster care services are funded through federal and state money. Federal funds used for foster care are matched totally by state dollars.

1.1.1 Service Population

Children under the supervision of the Department of Economic Security include children placed through voluntary parental agreement and children adjudicated dependent. A dependent child is defined by Arizona statute as a child:

- In need of proper and effective parental care and control and has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.

- Destitute or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, or whose home is unfit for him by reason of abuse, neglect, cruelty, or depravity by either of his parents, his guardian, or other person having his custody or care.
- Under the age of eight years who is found to have committed an act that would result in adjudication as delinquent or incorrigible child if committed by an older child.

Over the last few years the number of children in foster care placement in Arizona has remained rather consistent. The following statistics represent an average number of children for the month of July since 1978:

July 1978 - 2,084
July 1979 - 2,072
July 1980 - 2,151
July 1981 - 2,151
July 1982 - 2,038

According to foster care review board statistics, approximately 60 percent of the children in care have been out of their homes 18 months or longer, with an average of 36.7 months in care during 1981 and 1982. It should be noted that review board statistics reflect those children who have been in care at least six months.

A comparison of the type of placements for dependent children occurring in 1981 and 1982 is as follows:

	August 1, 1981	November 1, 1982
Home	12.2%	11.8%
Relative placement	14.1%	14.0%
Foster home	50.5%	49.5%
Nonlicensed - Nonrelative home	.8%	.9%
Group home	4.2%	3.0%
Residential treatment	7.3%	5.2%
Mental hospital	.3%	.7%
DDD institution	1.7%	1.8%
Adoptive placement	7.6%	10.9%
Other	1.3%	2.2%

The number of children who left care by reason for the month of November, 1982 breaks down as follows:

Return to parents	260
Placed with relatives	340
Adoptive placement	29
Reached age of majority	7
Death	1
Runaway	24
Other	29
Total	390

There has been a major thrust in placing children for adoption and providing adoption subsidy payments. In 1977, there were 119 adoption placements as compared to 322 in 1981 and 247 in 1982. The cumulative number of children receiving adoption subsidy over the last four fiscal years is:

1978-1979 - 106 children
1979-1980 - 304 children
1980-1981 - 429 children
1981-1982 - 601 children

1.1.2 Native American Population

There are 20 Indian tribes within the state of Arizona: Navajo, White Mountain Apache, Ak-Chin, Camp Verde, Coropoh, Colorado River, Ft. McDowell, Gila River, Havasupai, Hopi, Hualapai, Kaibok-Pointe, Popago, Pascua-Yoqui, Salt River, San Carlos, Fort Apache, Yavapai Prescott, Fort Mohane and Fort Yuma. Some tribes have contracted with the Bureau of Indian Affairs to administer their own social services programs while others rely totally on the BIA for service delivery.

In Arizona, the state does not provide state services on the reservations. However, the Indian population does have access to state services. Currently, 7.8 percent of the state's dependents in foster care are American Indian. In order to implement the Indian Child Welfare Act and also provide funding for Indian children who are AFDC-FC eligible, the state is developing inter-governmental agreements with individual tribes. The Gila River and Salt River tribes have signed agreements with the state, while negotiations with the Papago tribe are currently underway. Also, Arizona's 1982-1983 state child welfare plan outlines objectives to enable all interested Arizona tribal organizations to directly access federal funds for the provision of child welfare services on their reservations.

1.2 The Judicial System

Juvenile court jurisdiction in Arizona is in the superior court of each county. In counties with more than one superior court judge, the judges each year designate one or more judges to hear juvenile cases in the ensuing year. The presiding judge can name additional judges to hear juvenile cases if needed to handle the juvenile caseload. In counties where two or more judges have been designated juvenile court judges, one of them is designated "presiding judge of the juvenile court".

Being named a "juvenile court judge" does not necessarily mean a judge hears only juvenile cases, although in some of the more populous counties that is the practice. In counties with more than one judge, juvenile court responsibility is often rotated from year to year. In some cases, a juvenile court judge may have had juvenile court responsibilities for a number of years and be very familiar with those proceedings, while in other cases the judge may be merely doing a necessary "tour of duty", rotating through all superior court assignments. In Phoenix and Tucson, there are actually separate "juvenile courts" with physical facilities separated from the rest of the superior court.

Judicial staff are supplemented by juvenile court referees and/or commissioners. In Phoenix and Tucson, the judicial staff of the juvenile court is supplemented by these quasi-judicial staff and they are essential to the functioning of the court. Referees are not required to be attorneys, although they often are. They cannot hear contested cases or termination of parental rights cases unless they are attorneys. They are appointed by and serve at the pleasure of the presiding juvenile court judge. They may be employed full or part time. Referees, in general, may not make binding decisions -- rather, following a hearing, the referee transmits findings and recommendations to a judge and provides the parties with copies. Parties have seven days to request a review of the record, or a trial de novo if there is no record, by a juvenile court judge. (A verbatim record is not required and often is not made in referee hearings.) The judge issues the court's final order after the trial de novo or review of the record.

Commissioners, unlike referees, must be attorneys with at least four years' experience in law practice or as juvenile referees. They may make binding decisions in contested cases. Before appointing a juvenile commissioner, the presiding juvenile court judge must obtain approval of the county board of supervisors (who pay the commissioner's salary).

While Arizona's court system is nominally a state court system, the salaries of probation officers and clerical staff and overhead expenses, as well as one-half the salaries of superior court judges, is paid by the county. One-half the judges' salaries is paid by the state. The state supreme court issues rules for juvenile courts and accepts some reponsibility for training for juvenile court personnel -- and for including juvenile topics in the annual judicial conference.

When the foster care review board was implemented in Arizona, it was placed under the jurisdiction of the state supreme court.

During the initial implementation of the foster care review board system, a series of meetings were held of all the presiding juvenile court judges in the state to work out such issues as report formats and other implementation issues. In the ensuing years, the group is becoming institutionalized and has continued to meet each year. Staff of the state foster care review board (in the state supreme court) staffs the meetings and prepares agendas. A state supreme court chief justice has provided leadership by chairing the meetings. The group has now elected an experienced juvenile court judge as "spokesman" -- giving him authority to testify in the legislature, for example, on the group's positions. The group addresses issues such as court rules, budget concerns and new legislation. Although no permanency planning training for judges has yet been held, staff are hopeful this group may be a vehicle for doing so.

2. LAW AND POLICY

This section describes the Arizona laws and written policy which govern the procedures for establishing state custody of children and the ongoing agency, foster care review board, and judicial review of children in foster care. Section 3 will outline how these procedures are functioning.

2.1 History of Case Review

Prior to 1974, Arizona's Welfare Department was county administered. The creation of the Department of Economic Security established a state administered program and emphasized the lack of coordination between state agencies providing services to families and children. In January, 1974, the Community Coordinated Child Care Committee (4C committee) was established by the governor to serve as a mechanism for coordination and promotion of services to children and families. In 1976, the 4C committee created a statewide task force consisting of 125 Arizona citizens to do an assessment of the state's foster care program.

A major finding of the program was that permanent plans and consistent review of children in foster care was not occurring. Although there was policy requiring internal agency review by the social work supervisor and an annual judicial review of children in foster care, unplanned long-term foster care was prevalent.

The committee obtained advice from other programs throughout the country and in the 1977/1978 state legislative session, legislation was passed to implement foster care review boards.

Currently, foster care review of children in Arizona includes:

- Agency Review: Internal review of all cases by social work supervisor and review of selected cases by case review coordinator.
- Foster Care Review Board: Assist the judicial system by reviewing at least once every six months the case of each dependent child who has resided in foster care for a period of more than six months.
- Judicial Review: An annual review of the original dispositional order is required by statute.

Sections 2.2 and 2.3 will detail the laws and written policy which govern ongoing agency and judicial review of children in foster care.

2.2 The Law

2.2.1 Initial Custody

A child may be taken into custody by law enforcement or protective services staff on an emergency basis either pursuant to a court order or without a court order when the child is suffering or will imminently suffer abuse or requires a medical examination to determine whether physical or emotional abuse is occurring. (Ariz. Rev. Stat. Ann. §8-223.)

At the time the child is taken, or within six hours, the parent, guardian or custodian must be given written notice stating what has happened, the reasons, the agency responsible for removing the child, and its telephone number, and a description of the proceedings which will take place and the parent's right to seek a hearing on temporary custody. (Ariz. Rev. Stat. Ann. §8-223(D).) The agency must file a formal dependency petition within 48 hours (excluding Saturdays, Sundays and holidays) or return the child home. (Ariz. Rev. Stat. Ann. §8-223(D).)

No hearing is automatically held on the question of whether it was proper to remove the child from his or her home. Rather, parents may obtain a hearing if they make a written request for one within 72 hours (excluding Saturdays, Sundays and holidays) of the time they receive the notice of the child's removal and their rights. (It appears they must make the request without assistance of counsel.) The court must then hold a hearing on the question of temporary custody within five days of receipt of their written request in order to determine whether temporary custody is clearly necessary to prevent abuse pending the hearing on the dependency petition. (Ariz. Rev. Stat. Ann. §8-546.06.) The child may not be held for more than 21 days without a court order. (Ariz. Rev. Stat. §8-515.A.)

A child may be accepted into custody through voluntary placement for a period not to exceed 90 days (nor for more than two 90-day periods in 24 months) if the placement is clearly necessary to prevent the child from suffering or imminently suffering abuse. The child may be accepted only with the written informed consent of the child's parent, guardian or custodian. A child 12 or older must also consent unless the department determines the voluntary placement of the child is clearly necessary to prevent abuse. The voluntary placement must be terminated on the written revocation of consent by the parent or guardian. Placing the child voluntarily does not constitute abandonment, abuse or dependency under the termination statute. (Ariz. Rev. Stat. Ann. §546.05.)

2.2.2 Adjudication/Disposition

"The" hearing on the dependency petition must be set not more than 21 days from the date of filing the petition. (Ariz. Rev. Stat. Ann. §8-223(D)(5)(6).) In contested cases, the full hearing may take place considerably later.

If at the hearing on the merits of the case the court finds that the allegations are sustained, the court may proceed to disposition at once. (Rules of Procedure for the Juvenile Court, Rule 16(e).) The court must receive and consider any evidence on the proper disposition of the case and may then place the dependent child at home under protective supervision, in the custody of an agency, an institution or school, a relative or other specific person. (Ariz. Rev. Stat. Ann. §8-241.)

No specific predisposition report is required to be provided to the court by the agency although the case plan referred to below may serve that function.

2.2.3 Case Planning

Before a child is placed in foster care, DES must conduct an investigation of the child designed to establish an appropriate plan for placement of the child. Once the investigation is complete, if the court awards custody of the child to DES, DES must establish a plan for the permanent placement of the child and provide the court with a copy. Law stipulates that the plan must cover:

- The purpose for placing the child in care;
- The length of time necessary to accomplish the purposes of foster care;

- A description of the services to be provided to accomplish the purposes of the plan;
- The person in the agency responsible for seeing the plan is implemented.

(Ariz. Rev. Stat. Ann. §-511.)

2.2.4 Foster Care Review Boards

Organization

The presiding juvenile court judge in each county must appoint a foster care review board for each 100 children in foster care, or fraction of 100 (fewer than 150 children can be handled by one board, in the court's discretion). Each board consists of three to five members who serve staggered three-year terms. To the extent feasible, the board must represent the socioeconomic, racial and ethnic groups of the county it serves. Members may not be child welfare or juvenile court employees. The members must participate in training in order to be members of the board. Each board has a chair and vice chair and meets as often as necessary to review its cases, but no less often then twice per year. Members are entitled to reimbursement. (Ariz. Rev. Stat. Ann. §8-515.01.) The presiding juvenile court judge assigns cases of dependent children in foster care to a review board.

In addition to local boards, a state foster care review board is established in the state supreme court. All the chairs of all county review boards (except only one of every three chairs serves in counties with multiple boards) serve on the state board for the same term as their local term of office. Five additional members with knowledge of foster care are appointed by the state supreme court for two to five year terms. The board elects a chair and vice chair.

The state board meets at least twice a year to review and coordinate the work of local boards and to make recommendations annually to the supreme court, legislature and governor regarding foster care statutes and policies and procedures.

The state supreme court issues rules governing the conduct of local review boards and employs a coordinator and other staff to carry out the duties of state and local boards. The state board must establish training programs for local board members. (Ariz. Rev. Stat. Ann. §8-515.04.)

Procedures and Duties

Local foster care review boards must review, at least once every six months, the case of each dependent foster child assigned to the board to determine what efforts have been made to carry out the plan for the child's permanent placement. Within 30 days of the review, the board must submit to the court its findings and recommendations regarding the efforts and progress made by the agency to carry out the case plan and also submit any other recommendations regarding the child. The board is required to encourage and facilitate the return of the child to the natural parents or, if grounds for termination exist, to encourage the appropriate agency to take action to free the child for adoption. They are required to aid DES in informing parents of their rights.

When neither return home nor adoption is possible, stable long-term foster care is the required goal. Boards are also responsible for promoting stable placements for children by discouraging unnecessary moves in care and by recruiting suitable foster parents who might adopt. Boards must also make recommendations on foster care policies and procedures to the state board. (Ariz. Rev. Stat. Ann. §8-515.03.)

The juvenile court must forward to the local review board copies of the agency's case plan and progress report submitted to the court. (Ariz. Rev. Stat. Ann. §8-515.02.) Natural parents, foster parents and other interested parties may be involved in the review process when appropriate. (Ariz. Rev. Stat. Ann. §8-515.03.) The notice provisions which apply to judicial review apply as well to reviews by the foster care review board and require notice to the agency, foster parents, parent or guardian, child if over 12, and other interested parties. (Ariz. Rev. Stat. Ann. §8-515.) A copy of the board's findings and recommendations must be sent not only to the court but also to other interested parties, as the court requires. The report must include the date of the next review. (Ariz. Rev. Stat. Ann. §8-515.03.2.) Rules provide that the board may agree to hear any person who formally requests to be heard at the child's case review as long as the person has some connection with or knowledge of the child or family situation. When a child is present to give information, a single board member or member and staff assistant may interview the child and report to the full board. (Rules of Procedure for the Foster Care Review Boards, January 16, 1979.)

Authority

The formal authority of the board is limited to making the findings and recommendations to the court as described under Procedures and Duties. The board is also required to "encourage" a permanent and stable home for the child and, if appropriate, encourage the agency to initiate such procedures as would make the child eligible for adoption.

2.2.5 Judicial Review ("Dispositional Hearing") and Agency Progress Reports

A judicial review of the dispositional order of each foster child is required after the child has been in foster care for one year and each year thereafter. Notice of the review and the right of participation must be sent by the court by certified mail (unless court determines another method is more appropriate) to:

- The agency with custody of the child;
- Foster parents with whom the child has resided in the prior six months;
- Natural parents or guardian unless the parent's rights have been relinquished or terminated;
- The foster child, if over 12, and
- Other interested persons as the court directs.

The court may suppress the address of a party and may excuse the presence of a child at the review. (Ariz. Rev. Stat. Ann. §8-515.)

The court is aided in its review by reports from the foster care review board (Ariz. Rev. Stat. Ann. §8-515.03.2) and the agency's progress report. The agency must make a complete review of the placement and progress concerning a child every six months and prepare a report for the court based on this review. The report must include:

- An assessment of whether the puposes of foster care are being accomplished;

- An assessment of the appropriateness of the plan;
- The length of time the child has been in care; and
- The number of foster homes the child has been in and how long in each.

(Ariz. Rev. Stat. Ann. §8-516.)

In reviewing a case, the court must consider:

- The goals of the foster care placement and the appropriateness of the foster care plan;
- The services which have been offered to reunite the family; and
- The efforts that have been made to evaluate other long-term placement options when the child is not likely to be returned home.

The court must seek, where possible, to reunite child and family. Where this is not possible, the court must seek to provide a permanent placement for the child through adoption or long-term foster care. If this is not possible, the court should seek to provide group foster care or other care appropriate to the child. At the review, the court may either affirm the prior disposition of the case or modify it. (Ariz. Rev. Stat. Ann. §8-515.)

2.2.6 Severance (Termination of Parental Rights)

Grounds for severance include abandonment of the child; neglect or wilful abuse of the child; parental inability to discharge parental responsibilities because of mental illness, mental deficiency, drug or alcohol abuse when there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period; conviction of a felony if that proves parental unfitness for custody or if the sentence is so long the child will be deprived of a normal home; or voluntary relinquishment of parental rights. (Ariz. Rev. Stat. Ann. §8-533.)

The severance statute was recently amended during the 1983 legislative session to incorporate length of time in foster care as grounds for filing a termination petition. The new statute states that termination petition may also be filed if:

> (a) The child has been in an out-of-home placement for a cumulative total period of one year or longer pursuant to court order and the parent has substantially neglected or wilfully refused to remedy the circumstances which cause the child to be in an out-of-home placement.
>
> (b) The child has been in an out-of-home placement for a cumulative total period of two years or longer pursuant to court order, the parent has been unable to remedy the circumstances which cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

2.3 Agency Policy

Since the early 70's, authorities in the child welfare field in Arizona have been signalling attention to the dangers of unplanned long-term foster care. By 1974, a permanent placement project was piloted in Maricopa County. The project consisted of caseworkers having small, specialized caseloads with a focus on intensive services for foster children and their families. During the current site visit, workers and supervisors indicated this pilot project as the turning point in service delivery philosophy in Arizona. To incorporate permanency planning philosophy into service delivery statewide, the agency has developed a permanency planning article for the child welfare manual which stipulates that "every effort must be made by the Department to provide a permanent home for a child in foster care." The manual article stresses the following:

- Criteria for assessing the child and the child's family situation in order to develop the case plan;
- The permanent plans available for a child and criteria for choosing the most appropriate plan;
- Time frames for establishing permanent plans;
- The requirement for written agreements with parents when the plan is to return the child home;
- The requirement for written visitation agreements with parents;
- Involvement of foster parents in developing the case plan;
- The requirement that approval be obtained from the state Program Administrator for a plan of long-term foster care for a child under twelve years old;
- A written agreement that must be signed by the foster parent, agency and foster child for long-term foster care; and
- An internal case monitoring system.

Agency policies for removing children from their homes and the court procedures the agency must follow are based on the statutes previously outlined in Section 2.2.1.

2.3.1 Case Review

Arizona case review process includes agency, foster care review board and judicial review. The laws and policies governing the judicial and foster care review board reviews were described in Section 2.2. This section will describe the internal case review policy of the agency and policies governing the interaction between the agency, foster care review board and the judiciary.

2.3.1.1 Case Plan

The development of the case plan is the first phase of the case review process. Once a child has entered foster care, a case plan must be developed within the first 30 days of placement. Policy directs that the goal of return home should generally be the first choice for a permanent plan and that a plan for return home must be developed jointly with the parents. Policy also stipulates that within two weeks of a child's entry into foster care a written visitation agreement must be established with the parent. Children and foster parents are also to be included in the development of case plans.

The format for the initial foster care plan is also utilized for future progress reports for court and foster care review board reviews. The progress report must be submitted by DES to the court at least each six months. Agency policy elaborates upon state law requirements for the report. The report is to include the:

- Primary reason for care and a background summary of the child and family;
- Recommendations;

- Present situation of the family and child;
- Present placement;
- Visiting plan;
- Parents' statement regarding agency recommendation;
- Service plan and utilization of services; and
- Evaluation and reason for recommendations.

It also includes an attachment which is used to list all parties who should be notified of future court hearings and foster care review board reviews.

2.3.1.2 Internal Agency Case Review

Presently, agency case review is conducted initially by the caseworker's supervisor. The program manager of each district also reviews a random sample of cases on a quarterly basis and cases of all children who have been in care for 24 months. The agency also employs a case review coordinator who reviews a random sample of case records as well as problem cases which agency administration want monitored. There are plans being developed for a more intensive internal case review procedure. It consists of three levels:

Level One:	Every child in care for six months but less than 12 months must be reviewed at the supervisory level.
Level Two:	Every child in care for 12 months or longer must be reviewed on a quarterly basis by the program manager and provide a report to the state program administrator.

Level Three: The program administrator must compile a report of all children reviewed by the program managers and provide the statewide profile to the assistant director on a quarterly basis.

2.3.1.3 Agency Policy for Foster Care Review Boards

Policy delineating the agency's procedures in the FCRB review process has been developed in conjunction with FCRB staff. Presently, the social worker is required to submit a report to the local review board 14 days before the scheduled review. The components of the report were specified in Section 2.3.1.1. Agency policy also stipulates that the social worker and/or his/her supervisor must be present at the first foster care review of a child as well as all subsequent meetings except where a child is in a stable or pre-adoptive placement.

3. FUNCTIONING OF THE DISPOSITIONAL HEARING WITHIN THE CASE REVIEW SYSTEM

As outlined in Section 2, laws and policies have been established to structure the review of children in foster care. Actual implementation of these policies varies among the counties. This section first presents a brief overview of the results of Arizona's compliance and then focuses on how the case review system, including judicial reviews, is functioning.

3.1 Certification Status

The State of Arizona self-certified for the 427 requirements of P.L. 96-272 for 1981 and 1982. A compliance review was completed and a decision was withheld on compliance. At the time of the site visit, Arizona was still awaiting a decision as to whether the review was to be reconducted or the state would be found in compliance.

3.2 Functioning of the Case Review System

In looking at the functioning of the case review system it is important not only to look at the independent functioning of the internal agency review, the foster care review board and court review hearings but their interrelationship.

3.2.1 Case Plan and Internal Agency Review

A major emphasis has been placed on ensuring that case plans are included in every case. According to FCRB statistics only 50 percent of the agency cases had a case plan in 1974; today, there is a plan included in every case. A good indication of the importance placed on case plans is the statement of one worker who was interviewed. "I know administration wants case plans to be current. I remember having to go through every one of my cases a few years ago and writing case plans where there weren't any. Also, now my supervisor initials every one of my plans."

Emphasis has not only been placed on developing case plans, but on refocusing the emphasis of the plans, as can be seen by the change in case plan goals for children over the last several years. In 1977, 1,285 children had the plan of long term foster care as compared to 747 children with this same plan in 1981. The trend is continuing as is evidenced by a comparison of case plan goals in 1981 and 1982.

	August 1, 1981	November, 1982
Return home	26.9%	34.7%
Adoption	24.7%	27.3%
Long-term foster care	29.7%	29.4%
Other	21.0%	8.6%

Presently, the occurrance of internal agency case review is inconsistent throughout the state. The problem cases receive major attention, while those children in stable conditions receive less attention. In some offices visited every child is reviewed by the supervisor and social worker, while in other offices this is not occurring. The establishment of the three level case review system is intended to ensure that every child in care receives a planned review by agency staff.

3.2.2 Foster Care Review Board

Organization

There are presently 41 FCRB in the state consisting of 205 members. The boards are comprised of all volunteers with varying backgrounds. As indicated below, the racial composition of the boards approximates that of the state and there is a good age distribution of people serving on boards. The socioeconomic status of board members is higher than that of the state as a whole. Board members represent a variety of occupations -- including many professionals such as lawyers, mental health professionals and educators who work with children. Other members obtained a background in children's issues through parenting, community, charitable or church activities.

During the site visit, criticism by some agency staff was expressed that the review boards were not representative of the citizenry, in fact, they were becoming boards of professionals. On the other hand, some workers verbalized concern over having citizens without professional training review their casework decisions.

The 1983 foster care case review report delineates the demographics of review board members in 1982 as follows:

Ethnic Origin/Race	Percent of FCRC	Percent of State Population
Caucasion	73.5	72.4
Mexican/American	15.8	18.3
Black	8.2	2.9
Other	2.5	.6

Sex	Percent
Female	59.4
Male	40.6

Age	Percent
Under 25-34	25.8
35-44	33.5
45-54	24.7
55-64	8.8
Over 65	7.2

Income	Percent
Under $10,000	3.7
$10-20,000	22.7
$20-30,000	36.8
$30-40,000	17.2
Over $40,000	19.6

Misc.	Percent
Foster parents	10.2
Adoptive parents	15.2
Retired	8.1

BEST COPY AVAILABLE

Review board members are appointed for three-year terms. The turnover rate has been the anticipated one-third per year, with resignation also occurring during the year due to job conflict and/or change of residence.

As noted in the 1982 and 1983 foster case review reports, FCRB activity for 1980, 1981, and 1982 has been:

Activity	1980	1981	1982
Review meetings	393	410	417
Volunteer hours	6,296	6,999	7,609
Total cases	3,611	3,810	3,675
New cases	806	679	671
Old cases	2,805	3,131	2,998
Children reviewed	5,103	5,610	5,309
Dismissals/Out of system	628	683	875
Appearances of interested parties	4,873	6,520	7,460

To provide support to the local review boards, the state review board system is staffed by a coordinator and staff assistants. The central office is located in Phoenix with a branch office in Tucson.

The coordinator is responsible for establishing training for review board members and overall program coordination. The staff assistants are responsible for coordinating the day-to-day operations of the local review boards.

Training

As stated in Section 2, board members are required to receive specialized training. The state foster care review board takes this responsibility seriously and provides trainers, curricula, video tapes and the like to attempt to ensure high quality training. There is a strong belief in the necessity for training. The minimum number of training hours required of a newly-appointed board member is seventeen hours: four hours orientation, six hours skills, seven hours education. Serious efforts are made by state staff to ensure that board members actually receive training. During 1982, two board members were removed from local boards because they failed to meet the training requirements. Despite these training efforts, it becomes apparent from time to time that boards need additional training in particular topics. For example, a current issue recognized by both agency personnel and staff as requiring further training for board members is the legal restrictions under which the agency operates in carrying out its functions. At times, review board members believe agency staff should be doing things which agency personnel are prohibited by law from doing. For example, a review board might believe that agency staff should find an adoptive home for a fourteen-year-old, while agency staff realize that a fourteen-year-old may not be adopted without his consent and the child does not agree to adoption. It is beneficial for review board members to know of legal restrictions so when these restrictions cause problems review board members are in a position to seek legislative change. Some review board staff members indicated ongoing efforts to provide boards with more information of this kind.

Scheduling, Participation, and Notification

The FCRB's review all children who have been in foster care for six months, and every six months thereafter.

The meetings are scheduled by the review board staff, who keep track of review dates and of children who are in foster care through a computerized system. The state review board has gone to considerable lengths to ensure that it actually tracks all children in care. It uses agency payment records and, in addition, obtains copies of all court orders placing children in foster care. These records are used to schedule review hearings for each child in care.

Review board staff are also responsible for notifying all "interested parties" of the review date. A formal notice is sent out according to a list of "interested parties" provided to the review board by the agency social worker. It is the social worker's responsibility to keep the list of interested parties updated. There was concern expressed by review board staff that this did not always occur.

The review boards encourage participation of natural parents, foster parents, foster children, counsel, and agency staff. The boards believe their informal procedures encourage participation of all these parties. They have also made active attempts to get participation by implementing a call-in procedure for working parents and other professionals who cannot attend the review. Participation varies throughout the state. In some cases participation by interested parties only occurs if there is disagreement about the case. Attorneys have often not attended meetings. (See discussion under Legal Counsel below.) Recently, on complaint from the state level review board, a letter was sent from the state supreme court indicating that court appointed attorneys representing children were encouraged to attend review board proceedings. Some agency staff reported not encouraging parents to attend FCRB meetings because they believed the meetings would be confusing to the parents or the parents "would not be treated well."

Review boards reported difficulty in performing thorough reviews when agency staff did not attend review board meetings. Agency policy requires staff to attend the first meeting and all subsequent meetings unless the child's placement is stabilized, but does not mandate attendance in every case. As a result, agency staff sometimes do not attend. Review boards would like to see a requirement that agency staff attend every review board meeting. The FCRB indicated that 7,539 interested parties attended reviews in 1982.

Procedures and Authority

As stated earlier, the review board is to review all adjudicated dependent children who have been in care for six months.

The review boards schedule the first hearing for a child, six months from the date of the child's original placement into care. The agency is also required to send a six-month report to the court, however, the court's review schedule for court reports is based on the date of the child's adjudication. Although the same format for reports can be used for both reviews, the time frames may be different, and the differences in time frames sometimes create extra paper work for social workers.

At the review board proceedings, interested parties may be interviewed by the board either in groups or singly. Tape recordings are made of all reviews. Agency staff reported discomfort with the hostility they believed sometimes arose when foster parents, natural parents and agency were all brought together for review proceedings.

Some expressed the view that this was not beneficial to the parties and that the review boards could use training in handling hostilities that did arise.

On the other hand, when agency staff sometimes objected to all interested parties being in the room together, all attorneys interviewed, except those who serve on review boards, objected strongly to their clients' not being allowed to hear and respond to all testimony before the board. (See discussion under Legal Counsel below.)

The FCRB is mandated to encourage and facilitate the agency to implement as well as develop a permanent plan for the child. It appears that this task creates frustration for both review board members and agency staff. Many agency staff have not accepted the review board's mandate to question their case work decisions or actions. Usually, disagreement between the board and agency staff is not about the overall case plan, but about whether progress is being made toward carrying out the plan in a timely manner. Review boards are frequently critical of what they consider agency inaction. In some cases, review board members indicated they felt social workers tried to "save parents" at the expense of the child, while some agency staff felt that some review boards were too quick to find fault with the natural parents.

Once a review has been held, the review board must send a report to the court outlining its findings and recommendation. The DES and all other "interested parties" also receive a copy of the findings. The findings are only recommendations and are used in different ways throughout the state. A further discussion of how the court utilizes the review board recommendations is found in Section 3.2.4.

Legal Counsel

All attorneys interviewed, except those who themselves served on review boards, expressed a high degree of frustration at review board proceedings in comparison to court. While they were often willing to accept the informality of proceedings and willing to forego formal cross-examination, they felt especially frustrated at not being able to hear all statements made to the review board and to respond on behalf of their client or suggest to the review board other interpretations of what they had heard. Some considered this process a denial of due process. Many felt it was pointless to attend a hearing if they could not respond to what was said because they were not allowed to hear it and they had to wait "for hours" to present a simple statement. Some reported phoning in their positions and believing it was pointless for them to do more. Others believed they could learn about the positions of the other parties and attended for that reason.

Attorneys who serve on review boards found the review board process helpful on cases they were handling, however. (They would appear before a review board other than the one on which they serve.) These attorneys found that, despite restrictions on what they could hear, the consultation with the board was helpful to them in further handling of the case. They might, for example, be pressed to proceed with a termination of a parental rights case where they had not fully thought through the pros and cons. Review board members, on the other hand, believed attorneys were not interested and not representing their clients well if they did not attend the review board meetings.

3.2.3 Foster Care Review Board Relationship with Agency

Agency administrators and agency case workers had differing perceptions of the foster care review board. The administrators viewed the review boards as a necessary review entity. This view was based on the belief that the function of the review boards provided an increased capability to maintain appropriate levels of case review and oversight in support of agency service goals. In fact, some said they took comfort from the fact the review boards were there looking at each case to help ensure that the cases were properly handled and that children did not get lost.

A number of front line social workers and some supervisors believed the reviews were unnecessary and meddlesome. They perceived review board members as lay people without appropriate knowledge of the strengths and limitations of the service delivery system.

It must be noted that there was variation in worker's opinions of the review board throughout the state. In one county, the workers found the review board helpful in achieving their case plan goals. Variation was also found among boards within a county. It appeared that when workers and board members were questioned about their differences it often came down to personality issues, perceptions of each other's competency, and a misunderstanding of each other's role. This does not negate the fact that there were different philosophical issues in the approach to service delivery and different perceptions in how quickly permanent plans could be accomplished. Also, a social worker's indignation towards the manner in which a panel of citizens was questioning him/her and the review panel's indignation that a worker was not providing services as they perceived it should be done often became magnified and was incorporated into people's perceptions as the norm rather than a specific incident.

It became clear during the site visit that more progress is needed toward improving relations between social workers and the review boards. Both workers and review boards could benefit from further clarification of roles so that both the workers' case management responsibility and the board's advisory responsibility were clear and not perceived by the other as a threat or a usurption of authority. Progress in this direction could result in a more productive review process by reducing the sometimes adversarial nature of review proceedings.

The ACYF administration and foster care review board coordinator are working together to promote better communication and coordination between review board members and social workers.

3.2.4 Relationship Between Foster Care Review Boards and the Courts

The state foster care review board is located in the administrative arm of the state supreme court and is included in the state supreme court budget. Local review boards are appointed by the local presiding juvenile court judge. Both on a local and a state level, there is a close relationship of the two systems of each county.

Although there was an early reluctance on the part of the supreme court to have responsibility for the review board, the review board now appears entrenched and the judiciary generally happy with their existence and performance. Supervision of the review board system has also apparently served as a bargaining chip for the supreme court in seeking adequate funds in its overall budget. A recent survey done for the state review board found the judiciary generally pleased with the review boards. The judges also had come to appreciate the public relations advantages of working with citizens on the review boards in promoting good relations between court and community and increasing community knowledge of foster care problems. Review board members were also perceived as being politically effective in obtaining legislation. The judges also favored such changes in the severance law to cover frequently recurring situations not covered by the existing law.

In addition, it is clear that the location of the state foster care review board and its staff in the state supreme court provides a focus of attention for court issues in the handling of foster care cases. The board prepared statistics and an annual report on foster care issues, including issues involving the courts. The board's location "inside" the system has also allowed it informal access to the judiciary at the supreme court level and access to local judges because it is within the supreme court. Staff believes this has allowed informal resolution of many issues involving the court in foster care cases. For example, at the outset of the foster care review board system, some judges were simply not holding actual review hearings as required by statute -- although they might have been seeing social workers, foster parents, child or parents informally in the community. The state review board informed all juvenile court judges it would report on the percentage of cases in which review were held by county in its next annual report. The number of reviews immediately increased.

The appointing judge and the review board or boards in that county generally meet formally at least once a year, often in a luncheon format. Review board staff may also meet periodically with the juvenile court judge to discuss common concerns.

3.3 Legal Counsel

Although state law appears to require appointment of counsel in dependency proceedings for parents and children who are unable to afford counsel, this is not done in all cases. The statute states:

> "In all proceedings conducted pursuant to this title and the rules of procedure for the juvenile court, a child has the right to be represented by counsel."
>
> "If a child, parent or guardian is found to be indigent, the juvenile court shall appoint an attorney to represent such person or persons unless counsel for the child is waived by both the child and the parent or guardian."

Ariz. Rev. Stat. Ann. §8-225A-B (Emphasis added). Nonetheless, the Rules of Procedure for the juvenile court provide:

> "In all juvenile actions and proceedings the court may appoint attorneys to represent indigent parties." (Emphasis added.)

In several areas, we were told attorneys were appointed to represent children only when the parents contested the petition. Parents were appointed counsel only if they objected to the allegations or to the removal of their children. Even where counsel are appointed, often this does not happen until the first hearing on the petition, after the child has been in foster care for approximately 21 days.

In Tucson, judicial staff expressed a strong awareness of and concern for due process and expressed the view that counsel were appointed in "almost all" cases. In Phoenix, counsel was not appointed for children unless the parents contested the case; approximately 50 percent of all children in care there are not represented by counsel. It appears that parties were represented by counsel less frequently in Yavapai County. In Yavapai County, it was reported that the court often does not appoint counsel for children, even when requested to do so by the foster care review board in particular cases. In all areas there was a concern with the cost of appointed counsel.

It did appear that counsel was frequently appointed for both parents and children in contested cases but the percentage of contested cases is fairly small. Further, appointment of counsel only in contested cases does not deal with the need for counsel for parents and children to aid in case planning, court reviews, and other aspects of permanency planning for a child which take place after adjudication of a case.

Appointment and payment of counsel for children and parents was handled in various ways. In Phoenix, counsel for parents and children were appointed from a list of attorneys who wanted such appointments. Due to a recent change in rates of compensation, counsel are paid $30 per hour up to a maximum of $1500 per case for representation of parents and children there. Participants in the system in Phoenix reported a belief that better counsel were now accepting these appointments than was the case when compensation was $20 per hour up to a maximum of $275 per case. It was also noted that there were some excellent attorneys who accepted appointments in dependency cases on an unpaid pro bono basis as a public service. They were reported to do an excellent job. In Yavapai County, attorneys were also appointed from a list.

In Tucson, on the other hand, ten attorneys had contracts with the juvenile court to represent all parents and children. They were paid a flat fee of $175 per case regardless of the amount of time the case took. While court staff generally expressed satisfaction with the quality of representation, believing that the contract attorney system had resulted in most cases being handled by a pool of attorneys who were very familiar with local procedures and juvenile law, others believed that the extremely low compensation limited the quality of attorneys and the amount of work the attorney was willing to do on any particular case. It was clear that some attorneys who were highly experienced in and knowledgeable about juvenile law refused to bid to be contract attorneys because of low compensation. The 1983 state foster care review board report focused on inadequate compensation as one of the things that caused a low quality of representation. Review board participants in Tucson expressed the view that the low compensation and the flat rate contributed to some contract attorneys being unwilling to be active on behalf of child clients after initial adjudication. To be sure, all agreed that a number of the contract attorneys were dedicated and hard-working despite low compensation.

Concern was expressed by many about the quality of representation of children and parents. The Arizona Foster Care Review Board 1983 Report and Recommendations specified quality of legal representation for children as an area of concern. The board expressed a belief that many chilren's attorneys were not meeting minimum acceptable standards including: "seeing the child, interviewing relevant people (foster parents, therapists, social workers, teachers, etc.) and attending hearings". No one suggested that representation for parents was substantially better. This report and a number of others suggested a serious need for training for attorneys who handle these cases.

Partly as a result of state review board concerns, the justice of the Arizona supreme court responsible for administration of review boards sent a letter to all juvenile court judges concerning the minimum standards of representation which should be acceptable in dependency cases. The letter suggested striking from appointment lists attorneys who do not act competently. Juvenile court judges were passing the letter on to attorneys they appointed and observers believed the letter was having an effect.

Attorneys in Tucson and Phoenix were working through the Arizona Association of Counsel for Children and the Maricopa County [Bar] Child Advocacy Committee to develop training and other mechanisms to raise the level of competence of counsel in matters relating to children, to ensure that competent counsel are appointed, and to establish specific standards of professional responsibility in the representation of children.

There were also a number of concerns expressed about the availability of representation for the agency. Offices of the attorney general in Tucson and Phoenix were providing legal representation for fifteen counties, but were so severely understaffed that they rarely attended uncontested court reviews and at one point ceased all intake of severance cases because they did not have staff to handle them. This was a major roadblock to being able to place children in adoptive homes who were clearly suitable for that arrangement. Training, especially on permanency planning issues, was reported to be needed by staff of the attorney general's office as well. The legal representation was handled by local county attorneys, an arrangement that was also reported not to be entirely satisfactory.

3.4 The Annual Judicial Review

Arizona has had a statutory provision requiring an annual judicial review of children in foster care for many years. However, site visit interviews indicated that it was not until the late 1970's that hearings were held on a regular basis in all counties. The implementation of the foster care review board was sited as the impetus for those judges not conducting annual reviews to begin to do so. In the mid-1970's, the statute requiring annual review was amended to provide for notification of and participation by interested parties.

The Arizona judicial review statute has not been modified since passage of Public Law 96-272. Rather, the annual judicial review of the case of each child in foster care has been used to meet the dispositional hearing requirements of Public Law 96-272 and the foster care review board reviews are used to meet the requirement of six-month reviews.

Organization/Who Conducts the Hearings

Annual "judicial" reviews are conducted by juvenile court judges, referees and/or commissioners as assigned by the presiding juvenile court judge in each county. A system of volunteer referees has been established. These referees are not paid and donate approximately one day a week to review cases. In Pima County, annual reviews are regularly assigned to a volunteer referee unless there is a contest noted prior to the hearing date, in which case the case would be assigned to a judge. A contest might be noted because of an attorney request or because there was a termination of parental rights pending. Foster care review board staff indicated that when they alerted the presiding juvenile court judge that one of the volunteer referees had verbalized animosity towards recommendations made by the foster care board, he rearranged assignments so that cases in which there was a disagreement between a review board and the agency would also be heard by a judge.

In rural Yavapai County, annual reviews are heard by the juvenile court judge. In Maricopa County, many reviews are heard by juvenile commissioners and referees. The judges in Maricopa County usually hear termination proceedings and adoptions.

There were reports that the degree of formality of the hearing was affected by whether the review was heard by a judge, commissioner or referee. There seemed to be general belief that hearings before judges were more formal and that, particularly in comparison to some volunteer referees, judges were more willing to challenge the agency's approach to the case. Attorneys believed their presence was more important and they could have more impact in a hearing before a judge than a volunteer referee.

Scheduling/Notice

Judicial reviews are scheduled within one year of the date the child is adjudicated dependent and a disposition order is issued placing the child in foster care. By scheduling judicial reviews from the time of adjudication/disposition rather than from the date the child entered foster care, occasional scheduling problems occurred throughout the state. Because foster care review boards scheduled six-month reviews from the date a child entered foster care, the judicial review and foster care review board review were not always synchronized and a judge or referee might not have the benefit of a recent review board recommendation at the time of the judicial review. Also, because adjudication might be delayed more than six months in a contested case, some few children were not scheduled for a judicial review within 18 months of the date they entered foster care.

In some areas, judges are beginning to schedule judicial reviews on a more frequent basis than once a year. In some counties, the court was reviewing all cases every six months, while in other counties only certain cases were being reviewed more frequently. In at least one county, the court schedules the judicial review to immediately follow the foster care review board review so that the parties need not gather again and the judge has the immediate benefit of the board's report.

At the disposition hearing and each review hearing, the date of the next judicial review is set and noted in the "minute order", which is a court order or report of findings. In the two largest counties and in some of the smaller ones, a copy of the minute order is sent to the parties or their attorneys at the completion of the hearing and no other notice is sent to the parties by the court. In effect, then, this notice is sent six months to a year in advance of the next review date.

In other counties, additional notice is sent by the court to parties closer to the time of the hearings. In addition to notice from the court, the date of the next court hearing is mentioned, if known, in the report of the foster care review board which is provided to all parties after their review. Also, in some counties agency personnel notify interested parties of the court date.

Reports

Progress reports are required to be filed by the agency with the court every six months. There is not an agency policy or state law which requires that these reports be provided to other interested parties. Therefore, the parties who receive agency reports varies throughout the state. In some areas, attorneys indicated they were furnished with copies of the report whereas in another county they were not provided to attorneys in enough time for them to prepare a response.

In no case were copies of agency reports provided to interested parties as a routine. Besides the agency report, the court should receive the foster care review board recommendations within thirty days of the FCRB review. At the typical court review, therefore, there should be both an agency progress report and recent FCRB recommendations available to aid the court.

Counsel

The agency is frequently not represented by counsel at review hearings. Because of understaffing, the attorney general's office has decided to focus its attorney resources on severances (termination of parental rights) and adjudication and has a policy of not sending attorneys to reviews unless the matter is contested or a severance is pending.

Counsel is not automatically appointed for parents and children. If parents are not represented by counsel at the adjudication hearing, they are advised of their right to be represented. Often this means that they were only represented if they contested the case. Children, also, were often only represented if the case was contested and/or the agency recommended that the court appoint counsel for the child. The practice of not appointing counsel except in contested cases has the effect of depriving counsel when it may be most necessary to have someone help push for a permanent home for a child and push for a decision to be made for the benefit of all concerned.

Appointments of court appointed attorneys remain in effect for as long as the court has jurisdiction, and in those instances where counsel is appointed, many do attend review hearings. By a number of reports, it appeared counsel could and did play an active role in changing the course of the case or moving the case forward, but there were also reports of inactive and ineffective attorneys who knew little about permanency planning and were not aggressive in pursuing their client's interests, sometimes to the point of not attending review hearings (particularly when there was no extra pay for attending). Finally, some attorneys believed there was little for them to do in some reviews, especially those that were not specifically contested.

While there are groups of attorneys and individual attorneys who are quite knowledgeable about juvenile law, others had little knowledge of permanency planning or how court reviews might be used to press for action or decisions in a case.

Participants

State law requires that notice and an invitation to participate in the judicial review be provided to natural parents, children over 12 (unless excused by the court), and foster parents, as well as parties' that attorneys and the agency caseworker believe should be invited. One difficulty in obtaining full participation is that notices are sent so far ahead that the date may be long forgotten before it arrives. Nonetheless, there appears to be fairly high participation by parties in the reviews and many expressed the view that having the additional forum of the foster care review board, which is less formal, had actually encouraged many parents and foster parents to attend the court review also.

Both caseworkers and judicial staff expressed support for the idea of parents having their "day in court". In some cases, caseworkers reported that it was much easier to get parents' cooperation once it was clear the judge concurred they must do certain things to obtain return of their children. In addition, workers reported finding it helpful to have parents' anger over a decision be aimed at the judge rather than the worker. Judicial staff thought it was useful to parents to simply have a neutral person to hear their side of the story.

Type of Hearing/Due Process

The formality of the hearings and the degree of due process protection provided varied widely from county to county and case to case.

In many cases, parties were prsent at hearings and presented their views on the case without, however, formally presenting witnesses. In a smaller number of cases, witnesses were actually presented and in a substantial number of cases,, parties were present but an agreement had been reached previously out of court. In addition, in one county, in a substantial number of cases, the review consisted of only a review of the report with the caseworker present. No one reported solely paper review of cases. As reflects assignment of cases, the paid full-time referee in Tucson reported that 60 percent of the cases heard by him involved presentation of witnesses and an additional 20 percent involved parties present and expressing their views, while a part-time volunteer referee reported that no cases heard by him involved presentation of witnesses, 60 percent involved presentation of views of the parties with parties present, and 40 percent involved a review of documents with ony a caseworker present. Similarly in Phoenix, a judge reported more cases with parties present and presenting views or witnesses, while the commissioner reported the greatest number of cases settled by agreement prior to a court appearance although the parties were present in court.

In a surprising number of cases, no verbatim record was made of the proceedings. In Tucson, a record was not kept of proceedings before the volunteer referees although a report was kept of hearings before the paid referee and judges. In Phoenix, a record was not kept of proceedings before the commissioner, who generally heard reviews in chambers in order to promote an informal atmosphere for parties, unless there was a special request. A record was made of proceedings before the judge. In Yavapai County, a record was not routinely made of review proceedings, although they were heard by the juvenile court judge. While the hearings, without a formal record, may gain the advantage of informality, they lose the benefit of a clear record of what happened at earlier proceedings for use in later proceedings. A record might be useful for documenting parental noncooperation or agency failure to provide services required by the plan.

Although parties are generally allowed to present witnesses if they wish, one judge stated that he did not allow cross-examination of witnesses, rather questions could be directed to him and he would try to get answers. Also, when a party requested presenting witnesses, the case might be continued so that it could be reassigned to a judge.

All judicial officers reported making written findings or orders. There were complaints from other participants that the written orders were often not detailed enough to specify the required actions of the parties. In particular, there were reports of judges giving very specific verbal directions to caseworkers but not putting these directions in writing. As a result, if the caseworker or the judge on the case changed, there was no record for the successor on what had been ordered earlier, although the directions may have been very well thought out and clear.

Decisionmaking Standards/Authority of the Court

The Arizona statute does not require a specific decision on the permanent home for the foster child at the annual judicial review. The judicial officials interviewed did not indicate a particular belief that they were required to, or should, make a decision about a permanent home at the review. At the review they frequently considered the direction of the case, and indicated that even if they concurred with or disagreed with the agency recommendation and might even order the return of the child home, they did not appear to believe it was inappropriate to order continued temporary foster care for an unspecified period of time. Some judges, referees, and commissioners expressed a concern about children staying overly long in foster care and an awareness of foster care drift, but they did not necessarily see the annual review as a decisive point in the case.

The statute does specify matters which must be considered at the review hearing, including the goals and appropriateness of the plan, the services offered to reunite the family, and the effects which have been or should be made to plan for other care for the child when the child cannot return home. The statute also establishes preferences for efforts to be made on the child's behalf with reunification with the family first, adoption or long-term foster care second, and group care or other arrangements third, but sets no standard for when and how to choose among these options. This statutory guidance is very helpful in reviewing a case and in setting a direction for use, but does not provide standards for when a decision should be mandated.

Judicial officials believed they had authority to order the return of the child to the parents, order provision of services to the family with a plan of returning the child home or order long-term foster care. There were mixed views expressed by judicial officers regarding court authority to order the agency to initiate termination of parental rights proceedings, to place the child for adoption within a specified timeframe or to file for guardianship or custody for the child. Some indicated they believed they had the authority to issue such orders but preferred to "strongly suggest". Interestingly, agency staff believed judges had the authority to do all of these things.

Relationship to Foster Care Review Boards

The foster care review board was established to aid the courts in their judicial review proceedings. The FCRB provides the court with a written recommendation about a case and the court has the decisionmaking authority in each case. Although many review board members expressed the view that courts generally read and considered their reports, others expressed concern that they were not sure their reports were considered or even read.

Because both these bodies are involved in reviewing foster care cases, there is a need to mesh the two systems. Since no formal mechanism is provided by statute for communication between review board and court other than the review board's report, a variety of informal and ad hoc methods have been used to establish communication. In some areas, review boards "red flag" or use a different color paper for reports in which they want to highlight a concern about agency inaction in implementing a case plan or disagreement with the plan itself. Other forms of ad hoc communication included attending court hearings and personally contacting the judge about a specific case (i.e., requesting an additional hearing or asking the judge to be sure and probe a particular matter at an upcoming hearing).

Some review board members and staff expressed the opinion that they had less influence than other participants in court reviews because they were not regularly present at review hearings and their views were presented only by report. In some contested cases, in fact, there were indications that review board reports were not automatically admitted into evidence, and therefore not considered, unless a party specifically admitted them in evidence. Because of their concern over or knowledge about particular cases, review board staff and members are often more active than merely filing reports in individual cases. In those instances, where review board members or staff have attended hearings, their function, once there, was not always clear. In some cases members were allowed to testify as to the board's views, amd in one case, a psychologist board member was allowed to testify as an expert witness but not as a review board member.

Judicial staff seemed very clear that the review board proceedings were not judicial or quasi-judicial and that many members were "lay" people in the foster care system. Nonetheless, they generally reported reading the reports and noted that the reports sometimes raised issues which were important for the court to explore. Others indicated the benefit of the collective wisdom and decisionmaking of the review board as contrasted to the judge or referee looking at the case solely from his perspective. In some rural areas, it was reported that judges relied very heavily on their boards and almost always adopted their views, while in one county it was apparent that one volunteer referee held the local review boards in very low regard and indicated he refused to read reports which the review board had marked concerns with special arrows or colored paper because he found the practice insulting.

Although the interaction between review boards and the court varies throughout the state, the review boards continue to play an intergral role in the review of children in foster care.

4. PRELIMINARY DISCUSSION OF ISSUES

Arizona's foster care review system, consisting of internal agency review, foster care review boards and judicial review has been in operation for several years. This section will outline issues about the case review system which have been identified by personnel in Arizona and observations made during the site visit.

4.1 Relationship Between Agency and Court

Various mechanisms have been established in Arizona to provide ongoing communication and coordination between the DES and the courts at the state and county level.

At the state level the establishment of the 4C committee in 1974 provided an opportunity for court and agency personnel to sit down at the same table and work together on resolving some of the problems facing Arizona's children and families. Since that initial committee other interdisciplinary committees have been convened to work on service delivery issues affecting both the DES and the courts. DES administrators and a juvenile court judge from Maricopa County have a monthly meeting to keep each other informed of systems problems affecting service delivery. Program managers at the district level also have ongoing meetings with the juvenile court judges in their district. It appears that the agency makes continual efforts to promote communication and coordination with the courts. Attempts are made to address issues that create friction between the two systems. An example of this can be seen in how the courts and DES have dealt with the issue of state monies utilized for delinquent children in foster care. Presently money for these children is funnelled through DES to the individual county probation offices. The budgetary limits of this funding were not always adhered to by local judges and chief probation officers. A committee of court and agency personnel was established to address this problem. Progress has been made in individual counties' courts monitoring their expenditures for foster care.

Communication and coordination does not always run smoothly, but the procedures which have been established allow for common service delivery issues to be addressed. In order for ongoing coordination to occur between agencies and courts, structures to promote communication must be in place.

4.2 Relationships Between Agency and Foster Care Review Board

As indicated earlier, it became clear during the site visit that more progress is needed toward improving relations between agency social workers and the review boards. Presently it does not appear that agency staff accept the role of the FCRB. The animosity of some of the social workers about the review board process inhibits the effectiveness of the review. It is not necessary that review boards and agency staff agree on how a case should be handled, but it is important that both entities develop an understanding of each other's role.

4.3 Relationship of Review Board and Courts

While the relationship of review boards and court is generally good and the review boards are well-established and well-run, there are some areas of uncertainty in the relations between the two. There is no mechanism for ensuring the courts look at or take action based on the review board reports. Review board participants are sometimes so concerned about this and about particular cases that they resort to informal mechanisms, not clearly sanctioned, such as "flagging" cases, talking to the judge directly, or attending judicial reviews. There is also lack of definition about the nature of review board participation in judicial reviews and how review board reports will be used. For example, the law is unclear on whether the review board report may be admitted into evidence. It is not clear whether a board member may testify about the conclusions and opinion of the board.

Finally, the level of animosity of some volunteer referees in Tucson toward the citizen's review boards and their process appeared to also impede the agency's respect for the review board's role.

4.4 Emergency Removal of Children/Temporary Custody

There is a serious problem with lack of adequate due process safeguards prior to and at the time of removal of children from their home in an alleged emergency. No prior court hearing is required. A child may be held two days without a court hearing. A parent has only 72 hours in which to request a hearing after being notified the child has been removed. Counsel is not automatically appointed to assist parents during this time and once the time has passed, even counsel may not get the question of temporary custody reopened As a result, in many cases no court hearing is held on the question of temporary custody until the adjudication of the case some 21 days later.

4.5 Court Authority and Standards for Decisionmaking

The Arizona statutory scheme for judicial review provides an appropriate basis for review of foster care cases but it does not require the court to make a decision on the child's permanent home at the annual judicial review or before 18 months elapses. Also, state law does not spell out a legal standard for deciding what the child's permanent home should be. While judicial officials have some general awareness of foster care drift, there was no generally expressed view that longer than 18 months in foster care is too long in care. In addition, almost none of the judicial officials interviewed were aware of Public Law 96-272 since it had resulted in no change in Arizona law; they certainly had no belief it required a fairly definitive decision on the child's permanent home at or before 18 months in care. As a result, many children continue to be ordered into temporary foster care of unspecified duration at annual review hearings.

4.6 Lack of Record at Referee Hearings; Lack of Detail in Orders

One of the purposes of review and dispositional hearings is to explore and establish a record of what has happened in a case, and why and what must be done by all parties in the future. The widespread practice of not making a verbatim record, by tape recorder or court reporter, of referee proceedings and the reported problem of judicial officers not putting sufficient detail in their written orders means that at later stages of a case, such as proceedings on a severance of parental rights, there is an inadequate record of what happened previously. Without a record of earlier proceedings, it may be difficult to establish a history of parental noncooperation or a history of agency interference with visitation or failure to provide services. Without sufficient detail in written orders, parties lack guidance on what is expected of them and a different judge or different caseworker will have no memory of what was said verbally at an earlier hearing.

4.7 Counsel

Quality of representation by and adequate compensation for counsel for children and parents is a problem. Because compensation is low, many more experienced and knowledgeable attorneys do not handle dependency cases, although many who do are very dedicated. In addition, even in areas with higher compensation, there are problems with minimally adequate representation. It was generally perceived that more training is required. Many noted that little prestige attaches in the legal profession to handling dependency cases. Inadequate staffing of the attorney general's office to represent the agency is a serious problem, leading to lack of representation and inability to proceed with severance cases.

4.8 Training

There was consensus among agency and court personnel, review board staff and legal counsel that training was needed in the following areas.

- Legal issues;
- Permanency planning issues;
- Role of the foster care review board; and
- Agency policy.

A bill has just passed the 1983 legislative session which will allow all money collected from parental assessments for foster care services to be placed in a special pot to be used for training of personnel providing services to families of children in foster care. This can include training of agency social workers, judges, and lawyers. Presently, agency staff is developing a plan for utilization of the funds. Also, during this past legislative session, a provision was passed to include a box on income tax returns for people to check if they wish to donate any part of their return for prevention services for children and families.

4.9 Severance Law

A recurrent problem in Arizona has been that the statute for termination of parental rights did not allow for severance of parental rights in those cases in which a child has been in foster care for a prolonged period of time and no progress had been made by the parents to rectify the situation creating the need for foster care in the first place. The foster care review board, DES, concerned citizens groups and juvenile court judges have proposed that Arizona's termination statutes be revised to include length of time in care as grounds for severance. Recently the legislature added a new ground for severance allowing for severance of parental rights after the child has been in care either one or two years and the parents have been unwilling (one year) or unable (two years) to remedy the circumstances which caused the foster care placement despite diligent agency efforts to help. As some members of the legislature feared that the revision would adversely affect the minority population in Arizona, the revision has been passed with an expiration date of 1985, at which time new legislation will have to be introduced if the law is to continue.

7. SOUTH CAROLINA

The purpose of this report is to present an overview of the South Carolina foster care and judicial systems and to report preliminary findings concerning the organization and functioning of dispositional hearings within the state. The information was collected through review of applicable state law, policy and available statistical reports; and through interviews conducted with state and local agency, judicial and legal personnel.

During March of 1983 a week long site visit was made to the South Carolina state capital and to three local counties. The counties were selected in the following manner. Counties having more than one percent of the foster care population were classified into three size categories. From the list of counties willing to participate, a random sample was then drawn of one county in each size category.* The counties selected were:

Large County -- Charleston
Medium County -- Lexington
Small County -- Greenwood

---

*Certain counties indicated inability to participate.

1. CONTEXTUAL STATE AGENCY AND JUDICIAL INFORMATION

1.1 Agency Background

South Carolina's foster care program is state supervised and locally administered. At the state level the foster care program is the responsibility of Division of Children and Family Services, under the Office of Human Services. This is one of several agencies under the State Department of Social Services. Other agencies in the Department of Social Services include, the Office of Economic Services, the Office of Health Care Financing, the Office of Administrative Services and the Office of Adults. The Placement Planning and Resource Development Units of Children and Family Services have specific responsibility for the foster care program.

There are 46 counties in South Carolina and each of these maintains a Department of Social Services to administer service delivery. Custody is given by the courts to the county agencies. The JWK study reported that in 1980 there were approximately 78 foster care positions. State policy sets a caseload standard of 30 cases per worker.

In 1974, the South Carolina General Assembly enacted into law a statewide foster care review board system. There are 29 local review boards throughout the state, each composed of five members recommended by the Governor for the purpose of reviewing cases of children in foster care for over six months (South Carolina Policy and Procedures Manual: 08-28-22). Additionally, the legislature created a State Advisory Board which promulgates policies and procedures for review and makes recommendations to the General Assembly as to foster care and agency needs. The day-to-day administrative and clerical services are provided by the staff of the Children's Foster Care Review Board system which is a separate state agency.

1.1.1 Children in Care

In September of 1982, the Department of Social Services had 2,925 children in out-of-home placements. Of these children 55 percent were non-white and 45 percent were white. Forty-three percent were aged 12 or older. Thirty-nine percent of the children had been in care less than one year and 40 percent had been in care three or more years. According to the State Advisory Board's report of 1982, the average length of foster care declined by 8-1/2 months from 1977 to 1981. In the most recent three month reporting period, July to September 1982, 472 children entered care and 401 left care.

1.1.2 The Legal Basis for Custody

The usual manner for children to enter care is through court commitment for abuse or neglect. Voluntary entrustment can be made to the agency by the parents for 90 days, with one extension allowable upon approval by the state office permanency planning specialist.

1.1.3 Placement and Leaving Care

Of the children entering out-of-home care between July, 1982 and September, 1982, the following placements were reported:

Exhibit 1-1. Types of foster care placements

Types of Placement	Percent of Children Entering Care
Foster Family Home	74%
Group Home	14%
Institution	5%
Relative's Home	2%
Adoptive Home	2%
Other	0%
Total	100%
Number of Children	475

Source: South Carolina, Draft Information for the Legislative Proviso, December, 1982.

South Carolina reported having 108 terminations of parental rights in the period July to September, 1982. Of the children for whom any type of court dispositions were made, 30 percent were returned home, and 60 percent remained in care. Ten percent had other dispositions.

Of those children leaving care in the reporting period, the disposition of the cases was as follows:

Exhibit 1-2. Children leaving care

Reason for Leaving	Percent of Children Leaving Care
Return home	52%
Placed with relatives	16%
Adopted	19%
Independent living	8%
Other	5%
Total	100%
Total children	401

1.1.4 Budget and Expenditures

In 1981, the minimum cost per child was reported to be 3,500 (Children Foster Care Review Board System, Report to the General Assembly, 1982).

1.2 The Court Profile

In 1977, as a result of judicial reform legislation, South Carolina established a statewide Family Court system, with exclusive, original jurisdiction of child abuse and neglect matters, as well as termination of parental rights and adoption. Previously, counties could maintain Family Courts as a matter of local option. Child welfare matters were taken up largely in rural probate courts, or in such diverse courts as county courts, now abolished, and circuit courts of general jurisdiction.

The Family Court consists of 16 circuits including the state's 46 counties. There is on the average one Family Court judge per county, though in practice there is not always one judge sitting in a county at any one time. This is due to the rotation of judges throughout their circuit, with a concentration of two or more Family Court judges in metropolitan areas to handle the caseload.

There are approximately 55,000 cases filed in the state's Family Courts each year. These cases range from divorce and custody matters, to child support, including IV-D cases, juvenile delinquency, and child abuse and neglect.

Judges are chosen by votes in the state's General Assembly; this is true of any judicial office in the state above that of magistrate. Judges serve for four years, and are often re-elected by the General Assembly until retirement.

The Family Court itself has no staff other than a secretary assigned to assist each judge. Court services are the operation of the state's executive branch. For juvenile delinquency cases, intake and court services are provided by the state Department of Youth Services. Likewise, for child protective services, the Department of Social Services, provides intake, foster care, and adoption services. Most therapeutic or reunification services are provided through referral to other agencies, such as the community mental health centers and other community-based services.

Family court intervention in child abuse and neglect is brought about by petition or other legal process initiated by the Department of Social Services, and the Family Courts rely exclusively on the Department for such referrals.

2. APPLICABLE SOUTH CAROLINA LAW AND POLICY

2.1 Permanency Planning Law and Policy

In 1981 the South Carolina children's code was amended to establish a "Children's Policy" §20-720. This calls for care of children in need of service in the least restrictive environment, preferably their own home and makes the following statement concerning children removed from their homes:

> When children must be placed in care away from their homes, the State shall insure that they are protected against any harmful effects resulting from the temporary or permanent inability of parents to provide care and protection for their children. It is the policy of this State to reunite the child with his family in a timely manner, whether or not the child has been placed in the care of the State voluntarily. When children must be permanently removed from their homes, they shall be placed in adoptive homes so that they may become members of a family by legal adoption or, absent that possibility, other permanent settings.

South Carolina agency case review policy is also designed from the beginning to "assure that every effort is made to achieve an appropriate permanent plan for the child at the earliest possible time." (South Carolina Policy and Procedures Manual, 08.27.70).

South Carolina state law does not currently (although legislation is pending) mandate periodic judicial review of foster care, however, it does mandate initial court dispositional hearings and subsequent periodic citizen review board hearings. This section will first describe in detail this legal mandate and then present agency policy on the case review system.

2.2 Applicable South Carolina Law with Regard to Taking Children Into Custody and Termination of Parental Rights

2.2.1 Emergency Protective Custody and the Pre-Trial Hearing

South Carolina statute provides for emergency removal of a child when there is imminent danger to the child's life or physical safety. It is then required that the child protective service agency, and family court, be notified and that parents or others with custody be notified in writing including a notice of their right to a hearing, and right to counsel. The child protective service agency is then directed to begin investigation and to initiate proceedings. A pretrial hearing is to be held within 10 days of initiation of proceedings. At this hearing counsel are to be appointed, and a review of the reasons for initial removal is made.

2.2.2 The 30 Day Hearing

The hearing to determine custody is then specified to occur within 30 days. At this hearing the court may order the following dispositions relative to children in protective custody:

- Commit the child to custody or guardianship of public or private institution or agency for indeterminate period not to exceed age 21;
- Cause the child to be treated by physician, psychiatrist, or psychologist;
- Order other treatment, and in support of the disposition, order parents or other persons to do or omit certain acts;
- Dismiss the petition §20-7-1330.

2.2.3 The Termination Statute

The Children's Code specifies that termination may occur if the court determines that the child has been abandoned for a period in excess of six months or severely abused. Criteria for termination include:

- Willful failure to visit or support for six months;
- When as a result of petition for removal, a child has been removed and despite offers of help parents have made no effort to provide a suitable home;
- Parents are retarded or mentally ill to such an extent that they can never function as a parent;
- Presumptive legal parent is not the natural parent; and
- Indications of severe abuse in which it is indicated that the safety of the child would be seriously endangered if returned home.

2.2.4 Court Rule 47

While there is currently no direct legal mandate for court review of foster care cases, court rule 47 states that the court:

> shall have a duty to give each child subject to its jurisdiction such attention and supervision as will achieve the purpose of the law, and may on motion or petition conduct a review hearing.

This rule is used as a mandate for hearings currently conducted.

2.2.5 Legal Requirements for Counsel

South Carolina children's code provides that children in abuse and neglect proceedings shall be appointed both counsel and a guardian ad litem by the Family Court §20-7-110. It also specifies that parents or others subject to any judicial proceeding are entitled to legal counsel and that if such persons are unable to afford counsel that this shall be appointed by the Family Court. The Agency is to be represented by the circuit solicitor or his representative. This provision for legal counsel does not necessarily extend to termination of parental rights proceedings. The termination statute is silent on this matter. Counsel provided for the abuse and neglect proceedings may or may not continue for subsequent hearings.

2.3 The Legal Mandate for the Foster Care Review Board

In 1974, the legislature mandated citizen review of all foster care cases on a six month basis. Presented below is a summary of the statute.

2.3.1 Duties and Powers

As defined by South Carolina legislation the powers and duties of the local review boards are as follows:

- To review every six months each child in public and private foster care to determine what efforts have been made to acquire a permanent home.
- To encourage and facilitate the return of all such children to their parents, or if this is not possible to initiate procedures to make the child eligible for adoption.
- To promote placement with persons suitable for adoption.
- To advise foster parents of their right to petition the court for termination and the right of adoption of children in care more than six months.
- To direct the child caring agency to make arrangements for permanent foster care or guardianship for children for whom return home or adoption are not feasible.
- To report deficiencies to the Department of Social Services.

2.3.2 Information to be Provided

All public and private child caring agencies and institutions are directed by law to furnish specific information to the boards. This includes; relevant addresses, including that of attorneys, history of all placements, dates in care, court docket numbers and orders, reasons for care, activities to facilitate return home, child's contact with parents, physical and mental status of the child, post and present recommendations, a statement of the plan and reasons for the case plan.

2.3.3 Nonconcurrence

The law specifies that any person or agency aggrieved by the review board decision may request a hearing before the review board. If the agency does not plan to comply with the review board decision, the law directs the agency to notify the board within 21 days of receipt of the decision §20-7-1640.

2.4 Pending Legislation

While South Carolina law does not now provide for subsequent judicial review of children in foster care, there are several laws pending, all of which provide for this in one way or another.

One recent version, S.265, would require the social service agency to file a case plan at the initial dispositional hearing, which would:

- Specify obstacles to return home;

- Specify what services the agency would provide;
- Specify what actions the parents must take to resume custody;
- Provide for greatest degree of contact with parents possible;
- Provide placement as close to home as possible; and
- Provide for reasonable services for child.

Any dispute in the plan would be resolved by the court.

The proposed legislation then provides for court review of the child's status every 12 months upon petition by the agency. All parties must be notified seven days in advance. The court and other interested parties may petition a hearing prior to 12 months.

The agency petition must contain a report detailing the services offered, determination as to whether current placement is appropriate, listing of obstacles to return home, recommended disposition, and the reports of local advisory board.

The legislation also provides that the agency may request a review based upon pleadings upon submitting a court affidavit from the guardian ad litem, parent's legal counsel, foster parents, and local advisory board. If all are in agreement, the court may issue an order consistent with the affidavit or request a hearing.

It is expected that this law or a version of this law will pass in the Summer of 1983. The next section describes those parts of agency policy or case review not contained in legislation.

2.5 Current Agency Policy With Regard to Case Review

The most recent South Carolina policy manual provides for four types of case review:

- Clinical -- ongoing;
- Administrative -- every three months;
- Citizens Foster Care Case Review -- every six months; and
- Eighteen-month Judicial Case Review -- at 18 months.

Each of these is briefly described below.

2.5.1 Clinical Case Review

This is a continuous ongoing function of direct case supervision. The policy manual states its purpose to be thorough case assessment and appropriate treatment design and delivery.

2.5.2 Administrative Case Review

This is a function of the Foster Care Tracking System and is conducted every three months by progressively higher level administrators. The review schedule outlined in the policy manual is as follows:

- Three-month review -- County Case Management Supervisor;
- Six-month review -- County Director or his designee other than the supervisor who conducted the three-month review;

- Nine-month review -- County Liaison;
- Twelve-month review -- State Office Permanency Planning Specialist;
- Fifteen-month review -- South Carolina Department of Social Services Commissioner or his designee;
- Eighteen-month review -- Judicial Review subsequent to Agency's petitioning the appropriate Family Court.

Guidelines for conducting the reviews specify that all natural parents, and foster parents must be given three weeks notice and an invitation to attend, unless a Termination Petition has been filed, a Permanent Foster Care Agreement signed, or the parent has freed the child for adoption.

The reviews are to be conducted in the form of a case conference to be attended by the administrative reviewer, the caseworker, the supervisor, the parents if they desire, the child if appropriate, and the foster caregiver.

The content of the review is to focus on the need of the child for permanency and requires sharing of all service agreement, visitation and support records. The manual directs agencies to inform and prepare parents for the administrative review process.

2.5.3 Agency Policy with Regard to the Foster Care Review Board Hearings

2.5.3.1 Authority of Review Boards

The policies written by the Department of Social Services with regard to the review board are written to cooperate with and coincide with the law and the procedures established by the Foster Care Review Board, however, they specify that the review board "must be viewed as advisory and not supervisory in nature." Specifically they state:

> The Agency is the final authority in the administration of the services program. Any case decisions or recommendations of a Review board are advisory only. Agencies and institutions do not have to petition the court for relief from any Review Board case decision or recommendation (South Carolina, DSS Policy and Procedures Manual; p.08.28.22).

The policy manual notes that if the Review Board's decisions are not implemented by the agency, the Review Board can petition the court on behalf of the child. The petition would ask the court to order specific actions. The manual directs local agencies to make every effort to work out an agreement with the Review Board decisions and provides for state office assistance in this.

2.5.3.2 Agency Procedures with Regard to Citizen Review

Procedures specified in agency policy for the conduct of the reviews direct the local county department to notify natural/legal parents unless a Termination of Parental Rights petition had been filed prior to the scheduled review. The agency must also send the parents a copy of the review board's recommendations. Attorneys may accompany parents to the reviews. Foster parents are also invited to the reviews. Agency caseworkers and supervisors attend the reviews.

2.5.4 Agency Policy with Regard to the 18-Month Judicial Review

While South Carolina law does not yet mandate judicial review, agency policy calls for an 18-month judicial review subsequent to agency's petitioning. The policy manual notes that while certain family courts practice judicial review on a regular basis, it is not uniform throughout the state. The policy manual states that "the agency will petition the appropriate Family Court to advise the court of the child's status in care, the recommended permanent plan and that approval of the court to continue the plan will be secured." (p.08.27.60)

2.5.4.1 Legal Representation for the 18-Month Hearings

While at initial hearings the circuit solicitor's office is to represent the agency, the policy manual provides that the state's office of legal services will represent the agency in all 18-month Judicial Review proceedings. In order that the hearings can be petitioned and scheduled in time, agency personnel are directed to send the review packet to the Office of General Counsel at the beginning of the child's 16th month in placement.

2.5.4.2 What the Review Packet Must Contain

The review packets must contain the following:

- Protective Service Assessment or Social History;
- All parent agency Service Agreements;
- Child Service Agreements;
- Visitation Contracts;
- Child Visitation Chart;
- Financial Support Record;
- Placement Planning Checklist;
- All court orders;
- Expert evaluations; and
- Copies of written recommendations from previous reviews.

3. THE FUNCTIONING OF THE HEARINGS WITHIN THE CASE REVIEW SYSTEM

While agency policy specifically calls for the 18-month hearings, in practice South Carolina is in a period of transition with regard to implementation. This transition is being made in the context of an already highly developed nationally recognized Citizens Review Board system and, as yet, in the context of no direct legal mandate. As indicated in Section 2, legislation of one form or another mandating judicial review is pending. Currently the agency is awaiting this legislation before further extensive implementation mechanisms are developed. This section first presents the results of South Carolina's compliance audit and then a description of the hearings at the time of the site visit in February of 1983.

3.1 The 427 Compliance Review

South Carolina was audited for compliance with Section 427 in June of 1982. At this time they were found to be in compliance for FY 1981 and FY 1982. In describing the hearings note was made by the auditors of the fact that the 30-day dispositional hearings were frequently delayed until three months after placement.

In the summary review it was recommended, "that the state mandate through policy a periodicity limit for subsequent dispositional hearings rather than depending on the Citizens Review Board's recommendation." As a result the policies described in Section 2, with regard to agency petition for hearings at 18 months, were developed and placed into the policy manual.

The next section describes efforts thus far to implement the 18-month hearings.

3.2 Implementation of the 18-Month Hearings

3.2.1 Orientation and Training

Utilizing Court Rule 47, the state counsel's office has attempted to approach the judges on the subject of judicial review. In late 1981 the DSS counsel's office met with certain judges and conducted an informal survey to ascertain current procedures and to gain feedback on how the judges would prefer to conduct judicial review. Although results of the survey were reported to be diverse, as a result the state counsel's office appears to have initially fostered a procedure of paper reviews.

The Citizens Review Board has also polled judges and has contacted them by letter explaining P.L.96.272 and asking to be involved in any judicial review that may occur as a result of the law.

Although both the agency and the Citizen Review Boards had contacted judges, all except one of the six judges we interviewed were generally unaware of the P.L.96.272 judicial review requirement. The judges themselves stated that more orientation and training would be beneficial.

3.2.2 Types of Hearings Occurring

In the absence of a legislative mandate and in the light of the agencies' only recently established policy of petitioning for hearings at 18 months, there are currently three procedures and combinations of procedures under which judicial review of foster care is occurring in South Carolina:

- Court Paper Review upon agency petition at 18 months;
- Court hearings set by judges in order to review their cases; and
- Court hearings upon agency, citizen review board, or other party petition.

Those interviewed were unable to estimate how frequently each of the above mentioned reviews were occurring throughout the state. Each of these will be briefly discussed below.

3.2.2.1 Court Paper Review at 18 Months

In order to implement the Department of Social Services policy of petitioning for hearings at 18 months some county agencies, one of which we visited, had implemented a procedure of sending a report to the court at 18 months for review. In Greenwood County, in most cases, the judge signed the review without a hearing, unless specifically requested. An orientation meeting had been held with the judge. Exhibit 3-1 and 3-2 are copies of the letter to the judge and court order to be signed by the judge.

Exhibit 3-1

South Carolina
Department of Social Services
P. O. BOX 1520
Columbia, South Carolina 29202-9988

VIRGIL L. CONRAD
COMMISSIONER

SUBJECT:

Dear

As you are aware, the above-named child(ren) is (are) currently in the care of the South Carolina Department of Social Services. The Agency is committed to the timely development of permanent plans for foster child(ren). In order to assure that this occurs, administrative reviews involving direct delivery, supervisory and administrative staff are progressively required to review each child's case on a quarterly basis. Since the Court and Agency must work closely in the development and implementation of plans for foster children, judicial review of the situation is deemed necessary to assure that the Court concurs with Agency plans. In most cases, this entails the enclosed information being submitted for judicial review within eighteen (18) months of a child's placement and/or on an annual basis subsequent to the most recent judicial review.

Enclosed please find a copy of specific information concerning the above-named child(ren). This information indicates the Agency's work with the (these) child(ren) and his/her/their family, the family's efforts to improve their situation and the Agency's proposed permanent plan for the child(ren).

We are requesting that the Court review this information and apprise us as to whether the Court concurs with this plan. If so, please sign the enclosed Order so verifying. If not, it is requested that a formal judicial hearing be scheduled. We would appreciate your apprising us of the date for this hearing.

We look forward to hearing from you.

Social Services Worker

Social Services Supervisor

Director

Exhibit 3-2

IN THE FAMILY COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF)
DOCKET # ______________________

In The Matter of:)
)
a minor under)
the age of 18.)
)
)
)
______________________)

JUDICIAL REVIEW ORDER

Based on the file in this cause, together with the summary of services provided to the captioned minor by the Department of Social Services (DSS) and the recommendations of DSS as to the future permanent plans for this minor child; and,

It appearing from the full record before the Court that the permanent plan as submitted by DSS is in the best interests of this minor child; NOW THEREFORE,

IT IS ORDERED that the permanent plan for this minor as submitted to the Court by DSS, being in the best interests of this minor child, is adopted and approved by this Court; and,

IT IS ORDERED that this plan shall be submitted for further review by DSS at the end of twelve (12) months from the date of this Order; and,

IT IS SO ORDERED.

____
JUDGE, THE FAMILY COURT

______________ JUDICIAL CIRCUIT

CITY: ______________

DATE: ______________

DSS FORM 3036 (Mar 82)

3.2.2.2 Hearings Ordered by the Judge

Two large counties in South Carolina, Richland (Columbia, SMSA) and Charleston have judges who routinely schedule review hearings. Richland had participated in the National Council of Juvenile and Family Court Judges Children in Placement Project (CIP). The average review had been every six months during this period. Since the project ended, review continues but for some new judges it is less frequent. Within Charleston, one of the judges conducts both hearings and paper reviews on a frequent basis. The other judge has much less frequent reviews. When hearings are held on court order, summonses are served, with all parties being notified by the court. However, those interviewed noted that in most cases only the agency appears at the review hearing.

3.2.2.3 Review Hearings on Petition

Court review hearings may be petitioned by the agency, parents, or citizen review board in instances of disagreements. For example, the citizens review board may petition the court to gain a court order in support of a certain review board recommendation for which the agency has filed a nonconcurrence statement. There are, however, certain judges (about half, as estimated by citizen review staff) who refuse to hear these cases. The agency's attorneys have successfully argued in these cases that since the citizens review board can itself file for termination of parental rights, therefore, they can not petition the court to order the agency to do so.

When hearings are held upon petition, legal representation for the agency is through the county prosecutor or the state counsel. Notification is mandated.

3.3 The Role of Legal Counsel

The state counsel's office has developed directives to attorneys for conduct of the judicial reviews, and a listing of what the agency must provide for the reviewers. The child is to be appointed a guardian ad litem, separate from their attorney, for the proceedings.

Although legal representation is to come through the state agency's office, this office is currently attempting to contract with local attorney to petition the reviews for the agency. According to staff, funding has not, however, been available to get the project too far off the ground.

Court Rule 51 specifies that the court shall grant a fee not to exceed $100 (except in extraordinary circumstances) to counsel appointed for children in abuse and neglect proceedings and the court shall grant to the guardian ad litem a fee not to exceed $50 (except in extraordinary circumstances).

3.4 The Hearings in the Context of the Case Review System - The Role of the Citizens Review Board

Within South Carolina the role of judicial review must be discussed in the light of the already operating citizens review boards. This section provides a brief description of review board functioning and preceived strengths of the system. The next section, that dealing with issues of concern, provides an overview of the review boards position on judicial review.

3.4.1 Citizen Review Board Hearings - Description

The review board is usually able to spend about 45 minutes per sibling group. Attempts are made to obtain input from the parents, foster parents, the child if age appropriate, attorneys, guardian ad litem, and others who may be interested in the child. The proceedings are intentionally informal in order to encourage participation. Membership on the five-person review board varies, usually involving professionals and lay members.

The review board staff have summarized the major strengths of the system as follows:

- Review board members are citizens rather than employees of the court or agency. Hence, they can make recommendations solely on the basis of the child's interests. Many have training in child welfare, education and mental health;
- Enough time is available to review the cases;
- The informality allows for an indepth exchange of ideas;
- Because the system is on a statewide basis it can include an entire sibling group and have uniform practices and training;
- The system is cost efficient compared to the judges time;
- The system allows citizens to come face to face with the needs of specific children;
- Appointment by the governor is viewed psychologically as an honor;
- The system is cost effective; and
- The board serves as an advocate for increased resources for the Department of Social Services.

(Chappell, Barbara and Hevener, Barbara, "Periodic Review of Children in Foster Care, 1977)

Unresolved issues for the system have been noted as follows:

- The system is currently an independent agency. If it becomes necessary to be under an agency the review board staff believes it should be the South Carolina Supreme Court.
- Certain judges refuse to hear cases in which the review board is attempting to petition the court to order the agency to act in a certain manner.

3.5 Potential Exclusions to the Hearings

In light of the fact that South Carolina already had six months citizens review, the agency has formally petitioned the region in order that a procedure be developed whereby if all parties are notified (including parents, attorneys, guardians ad litem, and review board) and all sign an affidavit of agreement, a hearing will be waived. This procedure is provided for in the most recent pending legislation and has been supported by the citizen review board as well. At the time of the study no reply had been received. In the opinion of staff this would be applicable to at least 40 to 50 percent of the cases.

4. PRELIMINARY SUMMARY OF ISSUES OF CONCERN

Since South Carolina is currently in the process of drafting legislation concerning judicial review, major issues relate to the form and frequency such reviews should take. The major issues can be summarized as follows:

- How frequently should the reviews occur, and what will be the relationship to the citizens review board?
- How can the increased judicial/court workload be accommodated?
- What will be the role of legal community and how can legal payment be secured?

Each of these is briefly discussed.

4.1 Frequency of Review and the Role of the Citizens Review Board

As indicated in Section 2, there have been several versions of the legislation mandating judicial review. One early draft called for six-month review. The most recent version calls for 12-month review. This tends to be favored by the agency. One agency spokesperson noted that a system could be developed in which the citizen review and judicial review were alternated. Citizen review would occur at six and 18 months and judicial review at 12 and 24 months, etc.

The citizens review board, however, in formal comments to the legislative committee called for one of two options. The first noted that "the review boards need only court approval to meet fully the requirements of the federal law." If this occured they go on to state "the new legislation need only clarify the review board's authority to petition family court for enforcement of the board's decision." (Childrens Foster Care Review Board, "Comments on Proposed Legislation," Dec. 1982) This option of making the citizen review board court approved and hence using this review to meet the 427 requirements, is not favored by the agency.

The second option, recommended by the Review Board in their legislative comments, is holding the judicial reviews at 18 months and then every 18 months thereafter. They cite testimony of well known professionals in the field that 18 months time is sufficient, provided there is a strong citizen review every six months.

The citizens review board has also prepared an estimate (based on time estimates from other states) or the cost of yearly judicial reviews. In addition to judges and caseworker time, the estimate assumes the participation of guardian ad litems, attorneys for the child, attorneys for the parents, court reporter time, and DSS attorneys time. The yearly cost was estimated to be $454,442 in December of 1982.

As indicated in Section 3, the agency and the review board agreed that there should be provision for review on pleadings and affadavits when all parties are in agreement. It remains to be seen, however, how frequently judicial review will be mandated as well as the relationship the judicial review will have to the citizens review.

4.2 Court Docket Time and Judicial Training and Orientation

A concern expresed, by some judges interviewed, especially those who were not currently involved in judicial review, was the amount of docket time the reviews would take. However, some judges and lawyers did not think overall this would present a serious problem. As in other states all agreed that additional permanency planning training would be necessary.

4.3 The Role of Legal Offices and Payment for Representation

Currently within South Carolina, in some counties there is already a delay in getting a petition filed by the county solicitors office for the 30-day dispositional hearings and other hearings. To avoid this delay, agency policy calls for handling the 18-month hearing petitions through the state agency counsel's office. However, payment for legal representation remains an issue, as does adequate legal staff to file the petitions.

8. LOUISIANA

The purpose of this report is to present an overview of the Louisiana foster care and judicial systems and to report preliminary findings concerning the organization and functioning of dispositional hearings within the state. The information was collected through review of applicable state law, policy and available statistical reports; and through interviews conducted with state and local agency, judicial and legal personnel.

During March of 1983, a week long site visit was made to the Louisiana state capital and to three local parishes. Because Louisiana had not yet begun to implement dispositional hearings on a statewide basis at the time of site selections, at agency request, a decision was made to visit only those parishes in which some form of judicial review was occurring. The parishes chosen were:

- Orleans Parish;
- Jefferson Parish; and
- Acadia Parish.

1. CONTEXTUAL STATE AGENCY AND JUDICIAL BACKGROUND

1.1 Agency Background

Louisiana's foster care program is state administered by the Department of Health and Human Resources. Services administered by this department include, respite care, day care for children, homemaker services, foster care services, family planning, maternity services, protective services for adults and children, health services, community planning and employment.

Foster care is administered through the Department of Evaluation and Services. The director of DES reports to the Assistant Secretary of DHHR, who is appointed by the governor.

Service delivery is administered through eight regional offices (Orleans I, Baton Rouge II, Thibodaux III, Lafayette IV, Lake Charles V, Alexandria VI, Shreveport VII, and Monroe VIII). In addition the city of Orleans has a separate administration.

There are 64 parish's within Louisiana and 54 local offices. In 1980, foster care parish staff included 188 workers and 69 supervisors (JWK, 1982).

1.1.1 Children in Care

In December of 1980 the total number of children in care was reported as 5,150. In December, 1982 the number had risen somewhat to 5,473 children. A little less than half the children, 2,289, are in care in the Orleans area.

1.1.2 The Legal Basis for Custody

In order for a child to be placed in foster care there must either be a court order or voluntary agreement. Voluntary agreements may not exceed 30 days. After this, court custody must be considered. One 30 day period extension is allowable.

Court custody may be based on the following:

- Instant order placing temporary custody with the agency pending a court hearing;
- Court order placing child in agency's custody;
- Court order declaring the child legally abandoned, terminating parental rights; and
- Court order terminating parental rights based on parents inability to resume responsibilities.

1.1.3 Expenditures

The individual board rate per child ranges from $2,160 to $2,880 depending on age plus medical, dental, transportation and mental health services.

1.2 Special Projects

Within Louisiana there are two special projects that warrant the special attention of our study. These are the implementation of the Louisiana Plan and the Termination/Abandonment Project.

1.2.1 The Louisiana Plan

Louisiana implemented a special permanency planning pilot project within the Monroe Region in September, 1980. Since January, 1982 the project has been implemented statewide. The two major purposes of the plan have been described as follows:

- Providing immediate intensive services to the family at the point of crisis to prevent removal of children; and
- Providing immediate and intensive services to parents of children who have been placed in foster care. The goal is to return the children within six to eighteen months. Should this goal not be reached the agency may petition for termination so the child can be placed for adoption (Louisiana Plan State Child Protection Program Report, Nov. 10, 1982, Jonetta Russell).

The plan is facilitated through Family Team Conferences to be attended by family members, agency staff and other persons who may help resolve problems. As a result, a treatment plan is agreed upon with concrete tasks and expected dates of achievement. The plan demands that parents visit with their children every two weeks unless detrimental to the child. Workers must visit parents twice a month or more.

Results of the Louisiana Plan implementation from the Monroe Region have been encouraging to the state. There was a reported 93 percent increase in the number of cases closed in 1981 over the base year of 1979. More detail on the case review process involved in the Louisiana Plan is presented in Section 2.2.

1.2.2 The Louisiana Termination/Abandonment Project

During the period 1980 to 1982 legislative reform revised the Louisiana termination and abandonment statutes. According to those interviewed a previously nonworkable law was redrafted into a more liberalized, functional termination law. This redrafting included parental condition and parental incarceration cases as eligible for termination. The time required in foster care prior to termination was decreased from two years to one year in all but incarceration cases. The burden of proof in abandonment cases was reduced to clear and convincing evidence.

In order to mobilize the legal and child welfare systems to service cases under this statute, the Department of Health and Human Resources established the Termination/Abandonment Project. While working cooperatively with the Division of Evaluation and Services (under which foster care is administered), this project is not administered under this division. The project takes an advocacy stance vis a vis the agency.

The initial goals of the project were as follows:

- The development of a comprehensive statewide approach to the litigation of termination and abandonment cases.
- The identification of cases by the Division of Evaluation and Services and legal staff throughout the state to be litigated.
- The mobilization and training of interested district attorneys.
- The training of OHD/DES staff.
- The training of psychologists and psychiatrists involved in evaluation of parents.

- Successful litigation on behalf of the children requiring termination or abandonment.
- A legal manual for the handling of the cases.

Currently most legal filing for termination is handled from this agency throughout the state.

1.3 The Judicial System

Within Louisiana there are five different types of courts that can have juvenile jurisdiction:

Juvenile Courts
Family Courts
State District Courts
Parish Courts, and
City Courts.

The larger cities and parishes have juvenile courts which have exclusive juvenile jurisdiction in their parish. Some parishes have family courts which hear domestic as well as juvenile matters. In other locations, parish and city courts have concurrent jurisdiction with the state district courts.

Two of the parishes visited by the study, Orleans and Jefferson, had juvenile courts. In the third, Acadia, there is concurrent juvenile jurisdiction between the city court of Crowly and the state district court. State district court judges travel between parishes on a rotating basis.

In 1982, out of 751,382 cases filed by the city and parish courts 500,603 were traffic cases and 9,587 were juvenile cases. Of the total of 532,972 cases filed in the district courts, 12,191 were juvenile cases. The four juvenile and family courts reporting cases in 1980 (Caddo, East Baton Rouge, Jefferson, and Orleans) had 22,010 cases filed in 1980.

All judges are elected. The state district court judges travel between jurisdictions in their district. There are 40 districts within the state district court system and 53 city or parish courts within Louisiana.

2. APPLICABLE STATE LAW AND POLICY

2.1 Permanency Planning Policy

It is clear from examination of Louisiana law and agency policy that there has been a growing awareness of the importance of permanency planning within Louisiana. This is illustrated in the development of the Louisiana plan and the Termination/Abandonment Project described in Section 1. The following section details applicable state law and agency policy with regard to case review and permanency planning.

2.2 Applicable State Law

2.2.1 Reports of Abuse and Neglect

Louisiana Revised Statute 14:403 and the Louisiana Code of Juvenile Procedure require that all reports of abuse or neglect of children be made to the Crisis Intervention Unit of the Office of Human Development. The agency is required to investigate all such reports that are received. The agency must then file a report to the district attorney on all substantiated cases, regardless of whether judicial action is recommended. Depending on whether emergency removal of the child has occurred, the requirements for court hearings vary.

2.2.2 Emergency Removal

If the situation is serious enough to warrant emergency removal, the agency worker can request an ex parte emergency custody order from the judge. This order can be obtained by telephone. The agency worker must then file an affidavit within 24 hours and a probable cause hearing must be held within 72 hours of the child's entering care. At this hearing the state is required to prove a ground for continued custody. Hearsay evidence is admissible. The hearings are generally conducted in an adversarial manner with parties presented and represented by counsel.

2.2.3 The Adjudication Hearing

In cases in which the child has not been removed but a hearing is requested concerning an abuse complaint, an adjudication hearing must be held within 90 days of the appearance to answer petition by the counsel for the child. The child has a statutory right to counsel and the child's counsel must answer the petition filed by the district attorney within 15 days of the filing of the petition.

If the child has been removed from the home and agency custody has been continued at the 72-hour hearing then the adjudication hearing must be held within 30 days of the 72-hour hearing, which usually works out to 45 days after coming into care.

The adjudication hearing is a full hearing on the merit of the petition subject to the rules of evidence applicable to civil proceedings. It is conducted in an adversarial manner with all parties present and represented by counsel. Witnesses are sworn and testimony is taken.

2.2.4 The Initial Dispositional Hearing

If the child is adjudicated in need of care, a dispositional hearing must be held within 30 days of the adjudication. The delay between the adjudication and dispositional hearings can be and is often waived by parties. Hearsay evidence is admissible.

This dispositional hearing differs from the 18-month dispositional hearing of P.L. 96-272 in that there is no formalized requirement that the child's permanent home be decided at this hearing. The dispositional hearing decides placement of the child once the child has been adjudicated and the jurisdiction of the court is firmly established. The jurisdiction of the juvenile court then can continue until the child reaches the age of 18, or 21, with the child's consent. The legal standard governing the placement decisions of the court after an adjudication is a best interests of the child standard. The dispositional hearing decision can be made with the benefit of a predisposition investigation and report. Motions to modify.the disposition can be filed by any party after the disposition and must be heard in a contradictory manner if the modification imposes a more restrictive disposition, unless the consent of the parties is obtained. If the motion seeks a less restrictive disposition the motion may be granted without a contradictory hearing.

2.2.5 Informal Adjustment Agreements

Informal adjustment agreements can also be voluntarily entered into by the parties. These are written agreements between the state and the parents detailing certain conditions and obligations on the part of the agency and the parents, which if met will result in the petition being dismissed. The informal adjustment agreement is effective for six months and avoids an adjudication that the child is in need of care. In some courts these are used frequently.

2.2.6 Subsequent Hearings and Reports to the Court

At this time there is not a formalized state requirement that review hearings be held periodically after an adjudication, however, there is a state law that the agency must submit reports to the court evey six months after an adjudication.

In practice actual review hearings are held in several urban parishes such as Orleans and Jefferson. The Jefferson Parish Juvenile Court rules specifically mandates six month review hearings.

2.2.7 The Termination Law

A termination of parental rights petition may be filed one year after adjudication under Louisiana Revised Statutes 13:1600. The District Attorney may either be ordered by the court to file a termination or may file the petition at his or her own discretion. Grounds for termination include the following:

- The abuse or neglect results from a crime committed against the child or when the parent is an accessory to such crime; when there is cruel and inhuman treatment below a reasonable standard of human decency and parent is unfit to retain parental control and no reasonable expectation of reformation;

- One year has passed since the rendition of child in need of care adjudication and in court's opinion the parent is unfit to rear the child and the parent has shown no significant indication of reform;

- The abuse and neglect results from gross negligence which directly harm the child, and the parent is unfit to regain control and there is no reasonable expectation of reform;

- The child has been in someone else's custody for a year, DHHR has made every attempt to reunite with parents and the department recommends that would not be in the best interest of the child to be reunited.

- The child has been in custody of DHHR for one year due to mental illness, mental retardation or substance abuse on the part of the parent that was so profound that it rendered the parent incapable of exercising harm and there is no expectation of reform and expert testimony establishes that termination and adoption are in the child's best interests; and

- If the child has been in the custody of DHHR for two years due to the incarceration of the parent and there is no expectation of release for five additional years and expert testimony establishes that termination and adoption are in the childs best interests.

Voluntary surrender of children can also be made under state law by parents. Conditions for a decree of abandonment include desertion by the parent for at least four months with no provisions made for care and support. The standard of proof for termination and abandonment is clear and convincing evidence.

2.2.8 Subsidized Adoption

A subsidized adoption law was passed in Louisiana in 1978, providing for subsidized adoption of children with special needs. Louisiana Revised Statute 46:1790 provides that if a child is difficult to place for adoption because of physical or mental condition, race, age, membership in a sibling group, or other serious impediments or special needs, and the department has made reasonable attempts to place the child for adoption to no avail, and an adoptive family is capable of providing the permanent family relationship needed by the child in all respects other than financial, and the needs of the child are beyond the economic ability of the family, then a subsidy to the adoptive family is available through DHHR.

2.2.9 Court Followup for Children Whose Parental Rights Have Been Terminated

Louisiana Revised Statute 13:1606 makes several provisions for court followup of termination, abandonment and voluntary surrender. The law provides that if permanent placement has not occurred, registration will occur with appropriate placement agencies. If the agency still has custody of the child, the court must hold a hearing every six months, or sooner if the court deems necessary, until permanent placement is effected. The attorney representing the child pursuant to the termination continues to represent the child at these hearings.

In abandonment cases the department must report to the court within 90 days on the permanent placement plan and an attorney shall be appointed to represent the child. In cases of voluntary surrender the agency must report to the court on the permanent placement plan within 90 days. If no report is received by the court within 90 days an attorney to represent the child is appointed. The statute provides that any interested person, agency or organization may intervene in the review proceedings to facilitate permanent placement and to assure that the best interests of the child are protected.

The total aim of the statutory scheme is to facilitate permanency planning and to cut down on the need for long-term foster care.

2.3 Agency Policy With Regard to Case Review

Louisiana foster care policy is currently focused around implementing permanency planning statewide through the Louisiana plan. This plan, modeled partly on the Kentucky plan, uses the team approach to decisionmaking and to case review. As stated in the draft of the Louisiana plan:

> The Louisiana Plan in Foster Care services has been developed to assure that children are not retained in foster care without a definite goal or plan. Using a formal conference method allows each person involved with the child an opportunity to participate freely, express his opinions and feelings, and assist in setting goals for the child. It sets defined time limits for decisionmaking and it establishes responsibilities for each member. Progress is evaluated regularly. Respect for one another and the significance each person has upon the child is recognized early. (Preliminary Draft of Louisiana Plan, 4-5-82)

Team conferences to facilitate permanency planning are required at regularly scheduled intervals as follows:

- First Team Conference: In non-emergency cases within five working days; in emergency cases within 20 working days;
- On-Going Team Conferences: As needed but must be within 90- day intervals for first six months;
- Six-Month Team Conference: Considered the permanency planning decision making conference;
- On-Going Team Conferences After Six Months: Continue as needed but must be every six months until permanent plan is achieved; and
- Permanent Planning Family Team Conference: This is the first conference for those children in foster care placement prior to implementation of the Louisiana Plan. After this, conferences are held at six-month intervals. The hearing six months after this conference is the one at which a permanent plan is decided.

Exhibit 2-1 outlines the flow of these conferences.

Participants at the team conferences include the following:

- Mandatory: Parents, child if age appropriate, family service worker, family service supervisor, crisis intervention worker, case worker assistant; and
- Optional: Relatives or friends, specialists, parents' attorney, child attorney, regional supervisor, regional administrator.

The Louisiana Plan clearly sets forth the duties and responsibilities of each participant and the purpose of each conference. Service contracts and visitation contracts are signed by parents and workers.

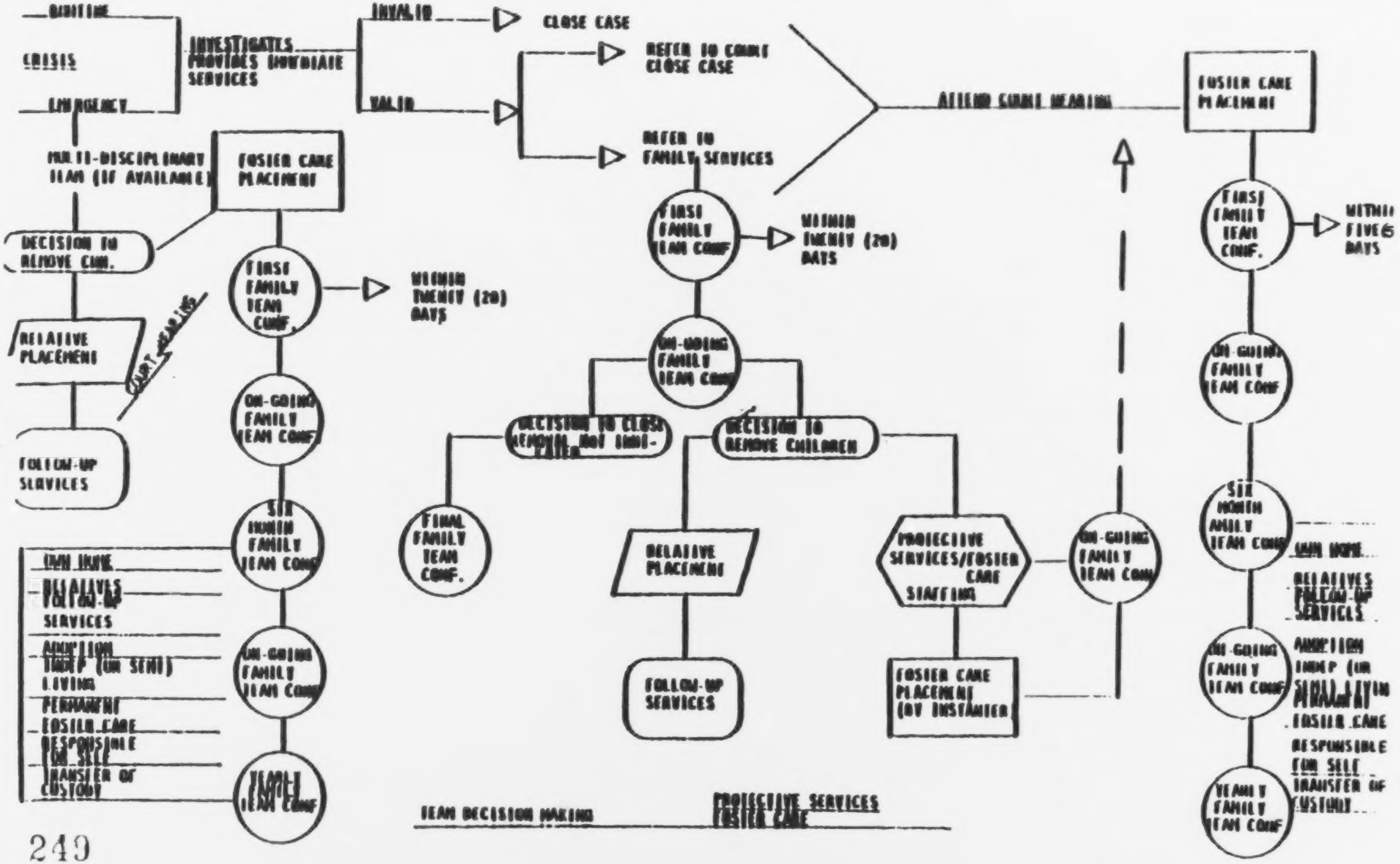

ROUTINE
CRISIS
EMERGENCY
INVESTIGATES PROVIDES IMMEDIATE SERVICES
INVALID
VALID
CLOSE CASE
REFER TO COURT CLOSE CASE
REFER TO FAMILY SERVICES
ATTEND COURT HEARING
FOSTER CARE PLACEMENT
MULTI-DISCIPLINARY TEAM (IF AVAILABLE)
FOSTER CARE PLACEMENT
DECISION TO REMOVE CHN.
FIRST FAMILY TEAM CONF.
WITHIN TWENTY (20) DAYS
RELATIVE PLACEMENT
COURT HEARING
ON-GOING FAMILY TEAM CONF
FOLLOW-UP SERVICES
SIX MONTH FAMILY TEAM CONF
OWN HOME
RELATIVES
FOLLOW-UP SERVICES
ADOPTION
INDEP (OR SEMI) LIVING
PERMANENT FOSTER CARE
RESPONSIBLE FOR SELF
TRANSFER OF CUSTODY
ON-GOING FAMILY TEAM CONF
YEARLY FAMILY TEAM CONF
FIRST FAMILY TEAM CONF
WITHIN TWENTY (20) DAYS
ON-GOING FAMILY TEAM CONF
DECISION TO CLOSE REMOVAL NOT INDI-CATED
DECISION TO REMOVE CHILDREN
FINAL FAMILY TEAM CONF.
RELATIVE PLACEMENT
FOLLOW-UP SERVICES
PROTECTIVE SERVICES/FOSTER CARE STAFFING
FOSTER CARE PLACEMENT (BY INSTANTER)
ON-GOING FAMILY TEAM CONF
TEAM DECISION MAKING
PROTECTIVE SERVICES
FOSTER CARE
FIRST FAMILY TEAM CONF.
WITHIN FIVE 5 DAYS
ON-GOING FAMILY TEAM CONF
SIX MONTH FAMILY TEAM CONF
OWN HOME
RELATIVES
FOLLOW-UP SERVICES
ADOPTION
INDEP (OR SEMI) LIVING
PERMANENT FOSTER CARE
RESPONSIBLE FOR SELF
TRANSFER OF CUSTODY
ON-GOING FAMILY TEAM CONF
YEARLY FAMILY TEAM CONF

Exhibit 2-1. Louisana plan flow chart

BEST COPY AVAILABLE

At the six-month conference a decision is to be made about the direction a case will take. Although it is recognized that that many parents will not have fulfilled all the case plans goals in six months, it is expected that sufficient information will be available to make a decision as to the permanent goal for the child. Even if permanent foster care is the goal, six-month reviews continue. These are timed to correspond with the report to the courts.

Within the Louisiana Plan, priority is given to exploring placement with relatives as the first option. Emphasis is on intensive service delivery utilizing multi-disciplinary teams for staffing. Four types of professional workers are utilized:

- Crisis intervention workers with caseload standards of 18;
- Family service workers with caseloads of 25 families;
- Foster care workers with caseload standards of 45 children; and
- Multi-disciplinary specialists - used as needed.

3. THE FUNCTIONING OF THE DISPOSITIONAL HEARINGS

As indicated in Section 2, Louisiana state law currently mandates only that the agency submit a report to the court every six months for each child in foster care. Actual review hearings are mandated only for cases in which a termination or abandonment judgement or voluntary surrender has occurred and the child remains without permanent placement. However, certain jurisdictions have been holding review hearings regularly for all children for several years.

Louisiana is currently in a period of transition with regard to statewide implementation of hearings in which various options are being considered. The following section first outlines Louisiana's certification status and then describes plans for implementation and how hearings are being conducted within those parishes already routinely conducting review hearings.

3.1 Certification Status and Implementation Plans

Louisiana self-certified only recently in the Fall of 1982 for 1983. They have had a pre-audit evaluation but have not been officially audited for 427 compliance as yet.

3.1.1 Implementation Plans

The Department of Social Services and judges have met on a statewide level to discuss P.L. 96-272 implementation and the Louisiana Council of Juvenile Court Judges has recently established a standing DHHR Liaison Committee. This committee has as its function the provision of a line of communication between the highest agency officials and the judges. The first order of business of this newly formed committee has been the implementation of P.L. 96.272. A memorandum detailing the dispositional hearing requirements was sent in February of 1983 to all judges in the state with juvenile jurisdiction by the president of the council. This memorandum recommends a review hearing at six months and reviews yearly or at 18 months thereafter. Exhibit 2-2 is a copy of this memorandum. Currently the council is seeking recommendations for implementation from court social workers, court liaisons, court clerks, and the judges themselves. DHHR officials are also formulating recommendations. The plan is for all these recommendations to be examined and a statewide implementation plan developed.

3.1.2 Discussion of Citizens Review Boards

One option being considered within the state is the establishment of citizen review boards. These are favored by the Termination/Abandonment Project staff and have reportedly received tentative approval to be organized on a pilot basis. Their role vis-a-vis court review is also being discussed. The president of the Juvenile Court Judges Association expressed the opinion that he would not favor using them as an alternative to court review. The agency also favors keeping the reviews directly under the court. At this point it remains to be seen what the plan for implementation of P.L. 96-272 dispositional hearing component will entail.

Exhibit 8-2

LOUISIANA COUNCIL OF
JUVENILE COURT JUDGES

February 15, 1983

MEMORANDUM

TO: ALL JUDGES IN STATE WITH JUVENILE JURISDICTION

FROM: JOHN D. KOPFLER, PRESIDENT

RE: FEDERAL LAW GOVERNING CHILD WELFARE PROGRAMS

Roger P. Guissinger, Secretary of the Louisiana Department of Health and Human Resources, has asked that I use this means to inform you of a new requirement in the Federal law governing child welfare programs (Public Law 96-272 - The Adoption Assistance and Child Welfare Act). This Federal law places a number of requirements on state child welfare agencies in order for those agencies to receive Federal Funding. With one notable exception, all of those requirements pertain to practices and procedures within the state agency. The exception is a requirement that all children placed in foster care have a dispositional hearing, in a family or juvenile court or another court of competent jurisdiction, no later than eighteen months after the original placement of the child in Foster Care, and periodically thereafter as determined by the Court. This dispositional hearing is to determine the future status of the foster child including:

1. Whether the child should be returned to the parents, or
2. Should be continued in foster care for specified period, or
3. Should be placed (or freed) for adoption, or
4. Should be continued in foster care on a permanent or long-term basis

It is important to distinguish between the use of "dispositional hearing" in the Federal Child Welfare Statute and the term "disposition hearing" as used in the Louisiana Juvenile Code i.e., the hearing we must hold within 30 days after adjudication. The term dispositional hearing as defined in the child welfare act means a hearing which takes place well after the child is placed in foster care and is directed toward determining a permanent plan for the child. Use of the term "permanency planning hearing" may help to make this distinction.

The eighteen month (after placement in foster care) timing for a dispositional or permanency planning hearing was chosen because national statistics indicated this to be a critical point in a foster

BEST COPY AVAILABLE

care placement. After eighteen months, the likelihood that the foster child will ever be reunited with his parents decreases dramatically.

Mr. Guissinger is asking his staff, in all areas of the State, to try to meet with their local judges to discuss the new federal law and to ask the court's cooperation in implementing the dispositional hearing requirement.

It is recognized that our state courts are not bound by this federal child welfare legislation, however, unless the requirements of this law are met, Federal Funding for Louisiana Foster Care Programs could be lost. With approximately 5000 children in foster care in Louisiana, at an annual cost of $20 million, our State can ill afford to jeopardize this important Funding Source. Additionally, each time a dispositional hearing results in returning the child to its' parents an annual savings of $4000.00 tax dollars is realized.

I request that when you are contacted by the Department of Health and Human Resources staff on this matter that you meet with them and establish local procedures to assist the agency with meeting this dispositional hearing requirement and that you will hold the appropriate hearings so this funding in the foster care program of the State of Louisiana will not be jeopardized.

It is my recommendation that a hearing be held six months after the child is placed in foster care at which time the State will have an opportunity to present evidence by the Department of Health and Human Resources to the Court to accomplish one of the four requirements as set forth in paragraph one (1) of this letter. Then a hearing should be held either one year or eighteen months thereafter for the Department of Health and Human Resources staff to report on the plan's progress and determine if the child should be placed or freed for adoption and any other action designated by the Court.

If you have any questions on this or other matters relating to the Department of Health and Human Resources we have scheduled representatives of that Department on the agenda for our annual meeting on March 4 & 5 at the Prince Murat Inn in Baton Rouge.

I would like to take this opportunity to thank you for your cooperation and I remain

Very truly yours,

John D. Kopfler,
President

JDK/bcb

cc: Mr. Richard Duscoe, DHHR

3.2 Hearings Already Occurring

As indicated in the introduction, at the request of the state agency, the parishes visited in Louisiana were chosen precisely because they were holding review hearings. The sites do, however, represent areas in which one-third to one-half of the children in care are located. A brief description of the hearings in each of these parishes follows.

3.2.1 Jefferson Parish

Article III, Rule 3.4(c) of the local rules of Jefferson Parish Juvenile Court mandate a review hearing within six months of the initial dispositional hearing. The review can be held earlier at the judges' discretion. The review hearing date is set at the time of the initial dispositional hearing. Hearings are always held by judges and the parties are served with notices to appear at the close of the dispositional hearing. In Jefferson Parish it is not uncommon for reviews to be held once every three months and sometimes every four to six weeks in special cases.

The hearings are adversarial in nature with parties present and represented by counsel. Witnesses are sworn and testimony is taken. Parties notified would include all those present at the initial dispositional hearing or the adjudication hearing if the dispositional delay has been waived.

The juvenile court social workers are assigned to each section, and a juvenile court liaison OHD worker helps to organize and coordinate the hearings. Attorneys are appointed to represent absentee parents.

The focus of the hearing is the current situation of the child, the current situation of the parent and changes in their respective situations. A placement or custody disposition can be changed due to the successful pleadings of the parent, changing needs of the child, or deterioration of the previous placements. The immediate goal is permanent placement.

3.2.2 Orleans Parish

Within Orleans Parish, the court system currently has a state grant which funds the Orleans Parish Monitoring Program. While new cases often have reviews set by the judge, this program is responsible for setting court review for old cases. The case reviewer is currently engaged in reviewing all cases in the court. A juvenile court liaison worker is also assigned to the court. Particular attention is paid to cases on the agency "out of compliance" list.

The review hearing monitors the child's permanent plan. It acts as a watchdog on the agency to assure that the court's orders are being carried out. The agency has been held in contempt for noncompliance. The Orleans Parish judge viewed this watchdog role of the monitoring program and judicial review as particularly important.

The hearings are conducted in a formal manner with witnesses sworn and testimony taken. The parties are notified and represented by counsel. Reviews take place every six months or sooner subject to judge's discretion. The full implementation of the monitoring program is expected to greatly increase the number of cases scheduled for review.

There has been in the past some tension between the court and agency, and judges in both Jefferson and Orleans Parish have used contempt citations against the agency. At times the head of OHD has been summoned to testify.

3.2.3 Acadia Parish

Both Orleans and Jefferson have juvenile courts, however, in Acadia Parish there is concurrent juvenile jurisdiction between the Crowley City Court and the State District Court of the Fifteenth Judicial District. The city court judge reported that he scheduled review hearings on all cases of children adjudicated as being in need of care within six months of the initial dispositional hearing. The state district court judge, who handles cases outside the city of Crowley limits, reported that he held review hearings at his discretion on a case by case basis, usually on about 50 percent of the cases. The date of the hearing was set at the time of the last hearing. If problems were resolved, a followup report rather than a hearing may be required.

Since 1980, in the city court there has been a court position of juvenile coordinator. One of the duties of this position is organization and coordination of the hearings. The city court judge reported that in the vast majority of cases, witnesses were sworn and testimony taken. The state district court judge sometimes held review hearings in chambers.

4. PRELIMINARY DISCUSSION OF ISSUES OF CONCERN

Louisiana is currently in a planning period in which a statewide design for P.L. 96-272 implementation has not yet been finalized. However, support for implementation has come from the Louisiana Juvenile Court Judge's Association as well as the agency. Issues of concern can be classified into two categories. Those related to the review hearings already occurring and those related to plans for statewide implementation relative to P.L. 96-272.

4.1 Issues Relating to the Review Hearings Already Occurring

4.1.1 Services Available/Utilized

According to agency sources, one issue of some concern is the fact that the judges sometimes order the agency to deliver services or to enact something over which they have little control. For example, sometimes the judge will hold the agency responsible for payment of foster care board to a relative who refuses to apply for foster care status or a service will be ordered for which the agency has not the resources to deliver. There is reportedly a severe lack of special facilities geared towards particular types of children.

Agency responses were mixed to this situation. Some state level staff noted that one advantage to the hearings was precisely that the hearings made apparent to judges and hopefully through them the public the scant resources available to the agency for services. On the other hand some agency staff expressed frustration at being held responsible for matters not in their control and at the adversarial role the courts sometimes played toward the agency. One worker said, "It's just one more time we're told we're no good."

4.1.2 Use of Hearsay Evidence

Another issue is the admissability of hearsay evidence. Although this is frequently allowed, in some courts it is not. Agency staff in these jurisdictions stated they thought the hearings would be more cost efficient if the family service worker and the foster care worker were not both required to attend the hearing in all cases.

4.1.3 Cross Referencing of Cases

One court encountered a problem with the case cross referencing system. A review hearing was scheduled in one section of the court and the natural mother was served with notice to attend the hearing. However, a termination decree had been finalized against the mother in another section of the court before the review hearing was scheduled. The mother attended the review hearing with the suddenly raised expectation of regaining custody. The court of this jurisdiction is currently examining ways to ensure that this situation does not reoccur.

4.2 Implementing the Hearings Statewide

4.2.1 Staff Shortage

In citing problems involved in implementing judicial review hearings statewide as called for in P.L. 96-272 the most frequently cited problem has been lack of personnel and resources. This includes court personnel and supporting agency personnel. The judges interviewed stated they thought that new positions within the court needed to be funded.

4.2.2 Use of P.L. 96-272 Funding for the Courts

Several judges suggested that some of the funds allocated to the states to implement the law should be allocated to the court system to hire additional court personnel. This would be used to fund legal representation, court social workers, and special masters as needed. Several judges felt that special masters or referees would be needed. It may also be necessary to have more judges.

4.2.3 The Absence of Full Time Juvenile Courts

As indicated in Section 1, most areas of Louisiana do have full time juvenile courts. Often in these areas juvenile matters and especially neglect and abuse cases are given a low priority. The need for juvenile courts has been felt especially in developed and rapidly developing areas. There is also an issue as to whether rotation of judges as now practiced provides enough continuity.

4.2.4 Lack of Counsel and Indigent Defenders

Both agency and court personnel cited the lack of counsel assigned to each court section. It was pointed out that current funding levels are insufficient to adequately insure the due process requirements of the right to counsel at the hearings.

4.2.5 A Group to Monitor the Agency

Related to the issue of the court ordering the agency to perform certain services, is the role of the court as agency watchdog. Some judges emphasized this role. Others noted that there was a need for an independent group or agency to monitor compliance of agency with court orders, and to monitor other agency activity. The Orleans court has recently established the court monitoring program to partly serve in this area.

4.2.6 The Establishment and Role of Citizen Review Boards

Related to the role of monitoring the agency is the movement to establish citizen review boards. Some judges pointed to citizens review as a possible way of implementing the law, and monitoring the agency, other judges did not favor the Review Boards in the role of conducting dispositional review hearings. They cited the fact that ultimately it would revert to the court anyway, since the review boards would not have custody authority. Some were also cautious concerning the possibility of finding the right people. They felt the judges would be put in the role of reviewing the review board.

The Division of Evaluation and Services is cautious concerning establishment of review boards, favoring instead emphasis on full implementation of the Louisiana Plan which emphasizes the Team Conference Approach. At the time of the site visits the agency favored pilot implementation of review boards on a test case bias.

4.2.7 Revising the State Statute

Some of those interviewed noted the importance of having the dispositional hearing requirements of P.L. 96-272 written into state law. These judges noted that only in this way could there be assurance that the requirements would be met on the state level. However, others felt that they were not ready for a state law and implementation should be tried before new legislation proposed. The state agency is not yet attempting to have new legislation passed.

Since Louisiana state law already requires actual hearings in cases in which termination has occurred but the child is still in agency custody, one possibility would be amending this provision to include cases of all children who remain in care over a certain period.

4.2.8 Timing of the Hearings

Louisiana currently requires reports to the courts every six months. The issue arises as to whether actual hearings should be required every six months or only at 18 months. Some judges felt that 18 months as required in the federal legislation was too long a time to wait, others felt that hearings should be waived in some cases with good causes.

4.2.9 Introduction of Unnecessary Confrontation

One concern expressed was that the hearings might result in unnecessary confrontation between the state and the parties involved which could result in exposure of the child to more trauma.

9. WASHINGTON, D.C.

The purpose of this report is to present an overview of the District of Columbia foster care and judicial systems and to report preliminary findings concerning the organization and functioning of dispositional hearings. The information was collected through review of applicable law, policy, and available statistical reports; and through interviews conducted with agency, judicial, and legal personnel during April of 1983.[*]

---

[*] Information was also obtained from the Juvenile and Child Neglect Report of the D.C. Court System Study Committee, the District of Columbia Bar, December 17, 1980, Charles A. Horsky, Committee Chairman.

1. STATE AGENCY AND JUDICIAL BACKGROUND INFORMATION

1.1 Agency Background

Foster care within the District of Columbia is administered by the Child and Family Services Division of the Family Services Administration. The Family Services Administration is under the Commission on Social Services, Department of Human Services.

1.1.1 Realignment of Child Welfare Services

In order to facilitate service delivery and permanency planning The Child and Family Services Division was reorganized in October 1982. This realignment created the Child and Family Services Division to bring together the two previously separate divisions of Child Protective Services and Residential Care Services. The newly created division has four branches:

- Intake branch
- Intensive Service branch
- Foster Care and Continuing Services
- Adoptions and Placement Resources

Exhibit 1-1 outlines the new department structure. The role of each branch is briefly described below.

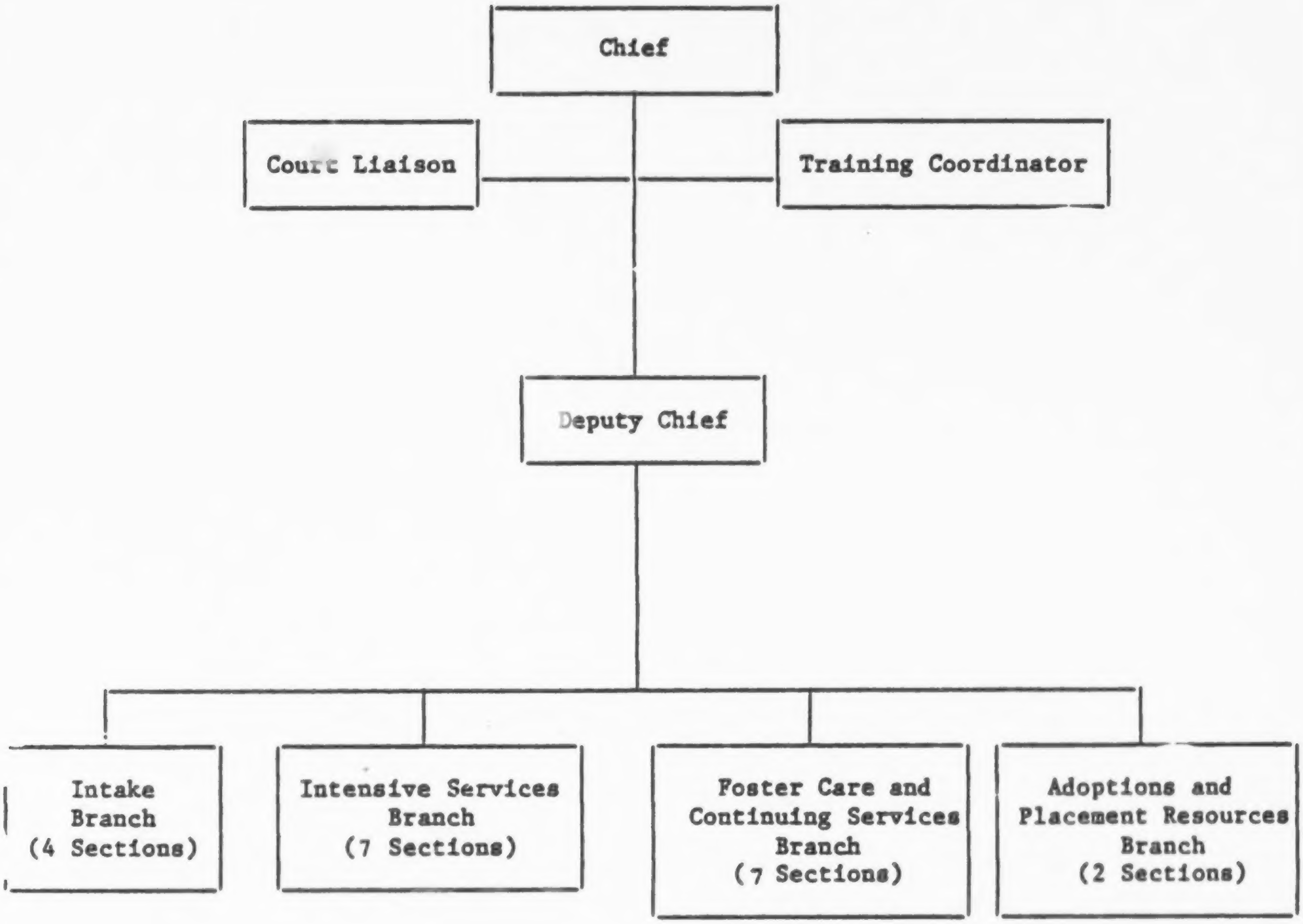
Exhibit i-1

Department of Human Services

Commission on Social Services

Family Services Administration

CHILD AND FAMILY SERVICES DIVISION


Chief
Court Liaison
Training Coordinator
Deputy Chief
Intake Branch (4 Sections)
Intensive Services Branch (7 Sections)
Foster Care and Continuing Services Branch (7 Sections)
Adoptions and Placement Resources Branch (2 Sections)

1.1.1.1 The Intake Branch

This branch is responsible for receiving reports of alleged child neglect and abuse, investigations and assessment of the need for emergency or crisis intervention services.

1.1.1.2 Intensive Services

The distinguishing factors for the Intensive Services Branch are low caseload and intensive delivery of services to clients. There is a maximum caseload size of 20 families. Those cases needing special attention and prevention services are within this branch. The branch provides services to remediate problems of child abuse and neglect, minimize the need for foster care placements, and shorten the time that the child must stay in placement. The branch also provides specialized services to adolescent parents.

1.1.1.3 Foster Care Continuing Services Branch

This branch contains a number of specialized caseloads with specific targeted populations. These are: teenagers, teenage mothers, purchase of service contracts, shelter care placements, consortium monitoring, third party placements, and special foster care.

1.1.1.4 The Adoption and Placement Resource Branch

This branch is responsible for recruitment of foster and adoptive parents, home studies, training of foster and adoptive parents and monitoring of and adoptive placements. It is also responsible for provision of a number of support services to foster and adoptive parents.

1.1.2 Background Statistics

1.1.2.1 Children In Care

Information in this section is taken from a preliminary draft report not yet in final form. In February of 1983 there were 2,768 children in foster care under the supervision of the D.C. Department of Children and Family Services. Forty-five percent were girls and 55 percent were boys. Exhibit 1-2 presents the case plan goals for these children.

Exhibit 1-2

Adjusted Goals for February (minus children in final adoption status)

Goal	Number	%
return home	284	13%
place w, relative/other	112	5%
adoption	259	12%
continued FC	986	45%
Independence	272	12%
to be determined	271	12%
invalid goal	584	-
Sub tot - minus invalid	2,184	

1.1.2.2 Children Entering and Leaving Care

The total number reported entering care between September, 1982 and February, 1983 was 164. Of these, 37 percent were five or under. Nineteen percent of those currently in care are five or under. Of those children leaving care in February, 32 percent were returned to custody of their parents and 42 percent had been in care less than six months. The primary reason for entering care as reported in the 1982 Program Review was child abuse and neglect, with 61 percent of the cases reporting this as the reason for placement.

1.1.2.3 Average Stay In Care, Number of Placements and Visitation

The agency reported in 1982 the average length of stay in foster care to be 5.1 years. In the program review conducted in 1982, it was found that approximately 92 percent of the cases had been in care more than 18 months. Sixty-eight percent had had more than one placement, and there were high rates of visitation between foster children and birth parents (82%).

1.1.2.4 Staff Education and Caseloads

A very large percentage (78%) of the D.C. staff have master's degrees in social work. While the education and quality of the agency staff is much higher than the national average, traditionally the agency has suffered from the problem of very high caseloads. In 1982 there was a full time equivalent staff of 127, of which 23 were supervisors. Exhibit 1-3 presents the results of the program review conducted in June, 1982 concerning actual caseload size, in comparison with agency standards. It can be seen that the average caseloads exceed agency standards by as many as 2 to 1 for traditional placement. Figures are not available since the realignment of late 1982 but discussion indicated that this situation had been somewhat alleviated as a result of the reorganization. The turnover rate for caseworkers was 18 percent in 1981-82.

Exhibit 1-3

Foster Care -

Traditional - 45 children
Permanent Planning - 20 children
Consortium - 90 children
Emergency Care - 40 children
Residential Facilities - 30 children

Adoption - 12 children

Protective Services - 25 families

The actual average caseloads for these service categories are as follows:

Foster Care -

Traditional - 117 children 41 families
Permanent Planning - 20 children
Consortium - 110 children
Emergency Care - 65 children
Residential Familities- 55 children

Adoption - 40 children
Protective Services - 30 families

1.1.2.5 The Consortium

About 25 percent of the total children in care under the agency are placed through purchase of service agreement with independent agencies forming the consortium. These agencies are monitored by the D.C. Department of Services but the consortium agency is responsible for provision of social caseworker and other special therapeutic programs. This process is especially used for children having physical or mental handicaps. All children placed by the consortium are within the agency tracking system and are subject to both agency case review and judicial review hearings.

1.2 The Judicial System

The Washington, D.C. judicial system consists of the Superior Court of the District of Columbia and the Court of Appeals. The Superior Court is divided into three divisions, civil, criminal and family with judges rotating through the divisions. There are 42 Superior Court judges. Judicial assignments are determined by the chief judge and are presently for three month periods. Each branch has an administrative judge who does not rotate during his or her tenure.

Neglect cases (the term "neglect" includes abuse and neglect) and proceedings to terminate parental rights are heard in the Family Division. This division also hears cases involving delinquency, need of supervision, parentage, and domestic relations matters. The 1970 District of Columbia Court Reform Act eliminated the separate Juvenile Court which previously had exercised jurisdiction over neglect cases. When judges are assigned to the Family Division, they hear all stages of neglect proceedings which are scheduled for hearings. Because of the rotation system, a different judge may hear each phase of a case. Judges can in their discretion maintain jurisdiction of a case.

Superior Court judges are appointed for ten-year terms by the President of the United States and are chosen from among nominees submitted by the District of Columbia Judicial Nominating Commission. Funding for the court system is provided by the District of Columbia City Council in its budget, which is subject to Congressional oversight and approval.

1.3 Judicial-Agency Relationship

Coordination between court procedures and Department of Human Services (hereinafter "DHS") procedures in neglect and termination of parental rights cases is provided by a court liaison officer employed by DHS who has a desk at both the agency and the court clerk's office. The responsibilities of the liaison officer involve channeling the legal papers and reports which DHS must prepare into the court system and informing DHS staff of court dates. The liaison officer works closely with the Family Division Clerk's Intrafamily Office.

1.4 Legal Representation

District of Columbia law provides that parties are entitled to representation by counsel in neglect and termination of parental rights actions and, if they are financially unable to obtain adequate representation, that counsel must be appointed by the court. In addition, each child who is the subject of a neglect or termination of parental rights proceeding must be appointed a guardian ad litem who is also an attorney (D.C. Code §16-2304(b)(1), and (2)). Appointment of counsel for parents and guardians ad litem for children is coordinated through the Family Division of Superior Court's Office of Counsel for Child Abuse and Neglect (hereinafter "CCAN"). This office maintains lists of attorneys who are available for appointment each day and makes recommendations to the judge who is responsible for appointing attorneys. The 1982 program review found that 71 percent of cases in the sample reviewed had counsel appointed and that for those in care less than eight years the figure was 91 percent.

Limited funds are available to provide payment to the attorneys. Thirty dollars is paid for each hearing with limits on the number of reimbursed hearings and maximum amounts set for different phases of the proceedings. Payment of fees for expert witnesses, investigation, discovery and court costs is also provided. Money was originally provided through a federal grant which began in 1979. When this funding ended, the City Council appropriated money to continue payment which began in October, 1982. These funds are administered through the CCAN office.

There are two sources of attorneys for appointments. First, attorneys can sign up with the CCAN office to receive appointments. These attorneys receive training through the CCAN office before they begin representation. The office also has a small staff which provides advice and back-up for the guardians ad litem who are appointed. No similar service is available for attorneys who are appointed to represent parents. The second source is attorneys who receive court appointments to represent juveniles in delinquency and child in need of supervision cases and are reimbursed through the Criminal Justice Act program. They must be available to accept appointments in neglect cases as a precondition of receiving CJA appointments.

For approximately one year, the Legal Aid Society of the District of Columbia had a parent representation project which was partially funded by local foundations. Because the funding ended, the Society stopped doing intake or neglect cases on January 1, 1983.

2. LAW AND POLICY

2.1 The Law

A description of the way that the 18-month dispositional hearing requirement is treated in District of Columbia law must be considered within the context of the entire judicial role in foster care. The law governing the placement of children and judicial review is found in the District of Columbia Code.

2.1.1 Initial Custody

A child may be taken into custody either pursuant to an order of the court or by the police on an emergency basis. There must be reasonable grounds to believe that the child is in "immediate danger" or "is suffering from illness or injury or otherwise endangered" and the child's removal from his or her surroundings must be "necessary." (D.C. Code §16-2309). The court may also order a child taken into custody when it has information that the child will not be brought to the hearing or when a parent or guardian has failed to bring the child to court. (D.C. Code §§16-2306(C), 16-2311(c)).

Whenever a child is taken into custody, the child must either be released to the parent, brought to a medical facility if prompt treatment or diagnosis for medical or evidentiary purposes is required or brought to DHS for shelter care. The Chief of the Child Protective Services Division of DHS then reviews the need for shelter care and makes a recommendation to the police for release or continued care. (D.C. Code §16-2311).

The Superior Court must hold a shelter care hearing the day after a child has been taken into custody, excluding Sundays, to determine whether the child should be continued in shelter care pending the adjudicatory hearing. (D.C. Code §16-2312). Shelter care is authorized under District of Columbia law in order "to protect the person of the child" or because there is no parent or other person able to provide supervision and care. In addition, shelter care is permissible only where there are no alternative resources or arrangements which would "adequately sageguard the child" at home. (D.C. Code §16-2310).

"Prompt" notice of the shelter care hearing must be given to the child and parent, guardian or custodian, and a copy of the petition must be given to counsel prior to the hearing. At the hearing, the judge must advise the parties of their right to counsel, appoint counsel where necessary, inform the parties of the contents of the petition and give the parent, guardian or custodian an opportunity to admit or deny the allegations. When evidence is presented, the child and parent, guardian or custodian have the right to be heard. If the child is released from shelter care, conditions may be imposed. If the judge orders shelter care, the reasons must be given in writing. The statute provides for a probable cause determination to follow any order for shelter care. Superior Court Neglect Rule 6(b), however, mandates that a finding that shelter care is necessary constitutes a finding of probable cause. The determination of the need for shelter care may not be postponed, although any other part of the hearing may be continued for up to five days. Where a parent, guardian or custodian did not receive notice, the court may conduct a re-hearing. The child and parent, guardian or custodian have the right to require that the judge who conducts the shelter care hearing not conduct the factfinding hearing. (D.C. Code §16-2312). Whenever a child is placed in shelter care, visitation must be permitted at least weekly unless the judge finds that it would create an imminent danger or be detrimental to the well-being of the child. (D.C. Code §16-2310.)

2.1.2 Initial Appearance

In all cases where a child is not taken into custody, an initial appearance is held within five days of the filing of the petition. At this time, the parties are informed of the contents of the petition and of their right to counsel.

2.1.3 Factfinding Hearing

A neglected child is a child:

- Who has been abandoned or abused by his or her parent, guardian, or other custodian; or
- Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian; or
- Whose parent, guardian, or other custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; or
- Whose parent, guardian, or custodian refuses or is unable to assume the responsibility of the child's care, control or subsistence and the person or institution which is providing for the child states an intention to discontinue such care: or
- Who is in imminent danger of being abused and whose sibling has been abused. (No child who in good faith is under treatment solely by spiritual

> means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for the purposes of this subchapter.) (D.C. Code §16-2301 (9).)

The allegations of neglect must be included in a petition which is prepared by Corporation Counsel for the District of Columbia after inquiry into the facets and a determination of the legal basis for the petition. (D.C. Code §16-2305.) After filing, a copy for the petition and the summons must be served on the parent, guardian or other custodian. The summons must advise the parties of their right to counsel. (D.C. Code §16-2306.) The Code contains no time requirements for the scheduling of the factfinding hearing and no limitations on continuances. The practice is for the adjudication to be scheduled four to six weeks after the initial shelter care hearing, with continuances frequently granted. At the hearing, the District of Columbia has the burden of proving by a preponderance of the evidence that the allegations in the petition are true. The judge must make and file written findings as to the truth of the allegations and as to whether the child is neglected. If neglect is found, the court must review the need for shelter care pending the dispositional hearing.

2.1.4 Disposition

Following a finding of neglect, the court must give notice of the dispositional hearing to the child and to the parent, guardian, or custodian. (D.C. Code §16-2317.) A social investigation report and plan, which meet the statutory requirements of a predispositional study and report, must be provided to counsel for the parties at least five days prior to the factfinding hearing, but cannot be furnished to or considered by the court prior to the completion of the factfinding hearing. The required contents of the report are enumerated very specifically in the statute and are designed to focus the disposition upon correcting the harms which were the basis of intervention, identifying specific services to be provided, specifying parental actions which must be taken, establishing time frames and stating the criteria for ending intervention. In addition, where removal of the child is being recommended, the report and plan must state the reasons why the child cannot be protected at home from the harm which occurred, address the harms to the child from separation and present a visitation plan which should "maximize the parent-child relationship consistent with the well-being of the child." (D.C. Code §16-2319.) Responsibility for preparing the social investigation report and plan rests with the Superior Court Social Service Division where abuse has been alleged and with the DHS Child and Family Services Division in cases other than abuse and those abuse cases that have recently been active with DHS. (D.C. Code §16-2107.)

At disposition, the court can order that the child remain at home with conditions imposed or under protective supervision; or it can transfer legal custody to the public agency (DHS), or to a licensed child placing agency which is designated to provide care for a child. The court may also give custody to a relative or other individual who is found qualified. Removal of the child from home is improper unless the court finds that the child cannot be protected at home and that there is an available placement which would be less damaging to the child than the home. The statute contains a presumption that it is "generally preferable to leave a child in his or her home." The child can also be committed for in-patient medical, psychiatric, or other treatment. The court has the explicit authority to order any public agency or any private agency receiving public funds for service to families or children in the District of Columbia to provide any service which the court determines is needed and is within the scope of the legal obligations of the agency. In his or her order, the judge should accept, modify, or reject the plan prepared by DHS or the court social service division. If the plan is rejected or substantially modified, it must be resubmitted to the parties and the court within 30 days. Once a plan is accepted, the burden is on the agency responsible for providing the services to notify the court and the parties if it is unable to provide the services delineated in the plan. (D.C. Code §16-2320.)

Dispositional orders transferring custody from a parent to a department, agency, or institution or to another individual can remain in effect for a maximum of two years. Where custody is given to a department, agency, or institution, the child may be released at any time prior to expiration of the order if it appears that the purpose of the order has been achieved, unless the court specifies that release is permitted only by order of the court. Dispositional orders providing for protective supervision can remain in effect for a maximum of one year and can be terminated earlier by the agency providing supervision if it appears that the purpose of the order has been achieved. (D.C. Code §16-2322.)

2.1.5 Extensions of Dispositional Orders

Dispositional orders vesting custody in a department, agency, or institution can be extended beyond the initial two-year period for additional periods of one year upon motion, if, after notice and hearing, the court finds that the extension is necessary to safeguard the child's welfare. (D.C. Code §16-2322.)

2.1.6 Review of Dispositional Orders

In September, 1977, a requirement of judicial review for every child adjudicated neglected became effective. Review hearings must be held at least every six months after the dispositional order is entered for children committed to the custody of the agency, department, or institution while the child is under the age of six, and for a child of any age, during the first two years of the commitment. In all other cases, review hearings must be held at least every year. Notice of the hearing must be given to all parties and their attorneys of record. At each review hearing, a report must be prepared by the department, agency, or institution responsible for the supervision of services and submitted to the court at least 10 days prior to the court hearing. The contents of the report are prescribed by statute and must include the following information:

1. The service provided or offered to the child and his parent, guardian, or other custodian;
2. Any evidence of the amelioration of the condition which resulted in the finding of neglect and any evidence of new problems which would adversely affect the child;
3. An evaluation of the cooperation of the parent, guardian, or custodian with the Division or the applicable department, agency, or institution;
4. In those cases in which the custody of the child has been vested in a department, agency, institution, or person other than the parent --
    a. the extent to which visitation has occurred and any reasons why visitation has not occurred or has been infrequent,
    b. the estimated time in which the child can be returned to the home, and
    c. whether the agency has initiated or intends to initiate the filing by the Corporation Counsel of a motion requesting the termination

of the parent and child relationship and any reasons why it does not intend to initiate the filing of such a motion; and

5. Such other information as may be required by rules of the Superior Court of the District of Columbia. (D.C. Code §16-2323.)

For every child who has been committed to the custody of a department, agency, or institution for more than 18 months and for whom no hearing on a motion for termination of parental rights has been held in the preceding 12 months, a review hearing must include an inquiry into possible termination of parental rights. The court must determine why a motion for termination has not been filed. This same determination must be made annually at review hearings for children who have been in placement for three years or more. (D.C. Code §16-2355.)

2.1.7 Termination of Parental Rights

Proceedings to terminate parental rights to neglected children are initiated by motion following an adjudication of neglect. The motion may be filed by either Corporation Counsel for the District of Columbia or the child's legal representative. Termination proceedings can be initiated six months after a child has been adjudicated neglected and placed out of the custody of the parent. Where the finding of neglect is based on abandonment, or where the parent could not be located for the factfinding hearing and during the three months prior to the hearing, the motion may be filed immediately. (D.C. Code §16-2354.) Notice of the adjudicatory hearing on the motion to terminate parental rights must be given to all parties and a summons and copy of the motion must be served on the parent, either personally, or where personal service cannot be effected, constructively. (D.C. Code §16-2357.)

The court must determine whether termination is "in the best interests of the child" considering each of the following factors:

1. The child's need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
2. The physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;
3. The quality of the interaction and interrelationship of the child with his or her parent, siblings, relative and/or caretakers, including the foster parent; and
4. To the extent feasible, the child's opinion of his or her own best interests in the matter. (D.C. Code §16-2353.)

The burden of proof is on the moving party to show the need for termination by clear and convincing evidence. (D.C. Code §16-2359.) Orders of termination must be in writing reciting the findings upon which the order is based. (D.C. Code §16-2362.)

2.1.8 Review After Termination

The department, agency, or institution having custody of the child following termination has responsibility for seeking the "prompt adoptive placement" of the child. Where the placement has not been made within three months, the child must be listed on all appropriate adoption exchanges. After six months without an adoptive placement, a review hearing must be held and every six months thereafter a report must be made to the court on the efforts made to locate an adoptive placement. Notice of the hearing and the information in the report must be given to the guardian ad litem 10 days prior to the review. Notice must also be given to any person with whom the child has been living for six months or more.

2.1.9 Relinquishment of Parental Rights

A parent may voluntarily relinquish parental rights to a licensed child-placing agency including the mayor of the District of Columbia or the mayor's designated agent, by executing a signed statement in the presence of a witness. This statement must then be recorded and filed in a sealed file at the court. Relinquishment does not subject a child to the jurisdiction of the court. There are no provisions for judicial review of children who are in placement as a result of relinquishment. (D.C. Code §32-1007.)

2.1.10 Emergency Care Placements (Voluntary Placements)

A child may be taken into custody by the Child and Family Services Division of DHS when an investigation has indicated that the child is abused or neglected and that services would not protect the child and the parent, guardian, or person acting in loco parentis consents to the removal (D.C. Code §16-2124(c)(1)). Within 90 days, either the child must be returned home or Corporation Counsel must be requested to file a neglect petition (D.C. Code §16-2123(a)(2). Because of a dispute between Corporation Counsel and DHS over whether Corporation Counsel is required to file neglect petitions in these cases, there are children in placement for more than 90 days regarding whom neglect petitions have not been filed. These children are not within the court's jurisdiction and there are no statutory provisions for judicial review of these cases.

2.2 Agency Policy With Regard to Placement and Permanency Planning

The department is currently in the process of redrafting policy and procedures. The following is a summary of applicable policy found in the new working drafts under which the agency is currently operating.

It is the policy of the agency to initiate court proceedings for the removal of a child when:

- It is determined that continued exposure to neglect is too great a risk for the well-being of the child, or that continued agency custody is needed for a child placed in voluntary care (DHS-MPP 1X-1-K-L:E).

However, the policy manual then emphasizes that commitment cannot be seen as a goal but rather as a step toward return home, placement with a relative, adoption, or for the older teenager, independence.

The agency states its policy to "limit placements of chldren to one year in the majority of cases and not to exceed two years except in exceptional circumstances" (DHS-MPP 1X-1-K-1).

2.2.1 Agency Policy With Regard to Case Review

2.2.1.1 The Case Plan

The Division of Child and Family Services requires that all children receiving child welfare services have a goal orientation case plan. The policy indicates the specific requirements of the plan, how it is to be approved and when it is to be reviewed and updated. At the time of the program review in Summer of 1982, 71 percent of the cases had case plans. It was noted at this time that the agency was in the process of implementation of the case plan system.

2.2.1.2 Case Plan Review

Agency policy specifies that administrative case review must take place within six months of the date the initial case plan goal is signed by the case worker supervisor, and then every six months from the date of the last "Summary of Administrative Review" form is signed. Review must also take place prior to termination of the case of a child who has been in custody within the last six months and a proportion of in-home services cases are also reviewed.

2.2.1.3 Purpose of the Case Review System

As specified in the policy manual the purpose of the case review system is to determine:

- The continuing need for placement or services;
- Appropriateness of placement or services;
- Extent to which all parties have complied with case plan goals;
- Progress toward alleviating circumstances necessitating agency involvement;
- Target date for return home, adoption, guardianship, or other permanent placement; and
- That chldren leaving are provided adequate services.

2.2.1.4 Participants and the Review Panel

Agency policy requires that the following be notified and asked to participate: the child's parents, the child if over 10, child's guardian ad litem, foster parents, child's surrogate parent, and major provider of services as determined by parent or worker to be important. The following staff must attend: the child's case worker; the family case worker, if different; and all applicable supervisors and representatives of the special placement unit. If a parent's rights have been terminated or relinquished, that parent will not be notified nor participate.

In addition to participants, there is a review panel for each review. This consists of:

- One or two reviewers from the Office of Review including contract and volunteer reviewers;
- The chief of the branch carrying the family record; and
- Other agency reviewers, upon request.

2.2.1.5 Materials Made Available to the Review Team

Caseworkers are responsible for providing the following materials to the review team at least five days prior to the review: case plan and service agreements, summary of most recent review, case plan update, court reports and orders, case contact sheets, and recent medical, psychological, or other reports. Copies of the case plan updates and summary of administrative review are to be made available to parents, the child's attorney and other participants. (Section 3.2 provides further discussion of the functioning of the case reviews.)

2.2.2 Agency Policy With Regard to Court Review

As described in Section 2.1, D.C. law requires court review hearings at six-month intervals for children in care under two years and annual review thereafter. The initial commitment order is for two years and a special hearing must be held to extend this commitment. Agency policy specifies the basic format for all reports to the court. It is required that reports include the following:

- Date commitment expires;
- Jacket and social file number;
- Name of child, date of birth;
- Parent's name and address;
- Dates of last contact;
- Progress of parent;
- Court history;
- Reason for commitment;
- Summary of review period;
- Services provided or offered to the child; child situation steps to minimize harm;
- Plan for future; and
- Signature.

Agency policy specifies that all reports to the court (except motions to extend commitment which must arrive 30 days in advance) should be in the office of the court representative at least fifteen days in advance of the hearing. Policy specifies that copies of the report should be prepared for distribution to the child's attorney, parent's attorneys, the ACC, the office of the court representative, and for the child's and family case records. The caseworker is instructed to bring extra copies of the report to the hearing, if the attorneys have not been in touch with the worker prior to the hearing.

The worker is responsible for bringing the child to court if he is five or older and his other appearance has not been waived. During the hearing a verbal presentation of facts is expected with information supportive of the recommendation.

Following the hearing, the worker must submit a copy of the court order to the court representative. The worker must also prepare and submit a Summary of Superior Court Hearing form to the representative. Exhibit 2-5 is a copy of this form.

Exhibit 2-5

EXHIBIT IX-1-K-2--4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Human Resources

SUMMARY OF THE SUPERIOR COURT HEARING

1. DATE OF HEARING: ____________________ 2. ASSIGNED SRA WORKER: ____________________

3.

CHILD'S NAME	BIRTHDATE	CT.SOCIAL FILE #	CT.JACKET#	SRA#
a.				
b.				
c.				
d.				
e.				
f.				

4. TYPES OF HEARINGS: (check one)

☐ Complaint or ☐ Waiver
a. ☐ Initial b. ☐ Trial
☐ Disposition

☐ Commitment Review
☐ Commitment Modification
☐ Commitment Extension

☐ Expiration
☐ After Care Revocation
☐ Term.Parental Rights (TPR)

5. PERSONS PRESENT:
a. Children present in court (circle code) a, b, c, d, e, f Attorney ______________
b. Children's appearance waived (circle code) a, b, c, d, e, f
c. Mother ______________________ Mother's Attorney ______________________
d. Father ______________________ Father's Attorney ______________________
e. ACC ______________________ Other ______________________

6. RESULTS OF HEARING:
a. Disposition of complaint:
  ☐ Hearing continued to: ____________________ ☐ Dismissed
  ☐ Found involved/complaint substantiated:
    ☐ Protective Supervision with report due: ________________
    ☐ Commitment: ☐ Neglect ☐ PINS ☐ Delinquency
      ☐ Not to exceed ________________________
      ☐ With Exparte Review on ________________
b. Commitment Continued:
  ☐ Changed from ____________ ☐ With new Exparte Review on ____________
  ☐ With no change ☐ With new Court Review on ____________
  ☐ Not to exceed ________________
c. Commitment Set Aside:
  ☐ Recommended by SRA ☐ Not Recommended by SRA

7. PLACEMENT AND WORKER FOLLOWING INITIAL COMMITMENT

CHILD	WORKER (FR*)	AFDC-FC APPROVED	PLACEMENT AND ADDRESS
a.			
b.			
c.			
d.			
e.			
f.			

8. COMMENTS TO BE ADDED ON BACK OF FORM, AS APPROPRIATE.

______________________ Caseworker in Court ______________ Date

DHR-1453 (1/78)

______________________ Branch ______________ Division

BEST COPY AVAILABLE

3. FUNCTIONING OF THE DISPOSITIONAL HEARING WITHIN THE CASE REVIEW SYSTEM

3.1 Agency 427 Certification Status

As of April of 1983, the District of Columbia had not yet 427 self-certified for any year. Agency staff were well aware of P.L. 96-272 requirements and were working on implementation of those aspects of the law not yet in place. In July of 1982, a program review was conducted by the Children's Bureau. This review found that 76 percent of the children in the sample, in care 18 months, had had full court review of commitment hearings. It was noted in the review that ex parte reviews were occasionally held rather than full hearings and it was recommended that District policy and law be amended to specifically require "open court" hearings within 18 months for all children.

3.2 Functioning of the Administrative Review

Before discussion of the court review hearings, a brief description is presented of the six-month agency reviews. Section 2.2 has presented a summary of agency policy with regard to organization and participants for these reviews. This section presents a description of the conduct of the reviews.

Administrative review hearings with outside reviewer participants were mandated by agency policy only in July of 1982, and in the past year the agency has been in the process of implementing the reviews for both old and new cases. In preparation for the reviews, the caseworker is responsible for seeing that parents and foster parents, reviewers, and all other participants have copies of the plan and plan updates five days before the scheduled review. At the hearing itself, the caseworker summarizes the plan and any plan updates. Each participant is then given an opportunity to comment. Recommendations are then made as to whether the plan should be modified, with opinions sought from each participant. Major disagreements are to be noted. There is an attempt to reach consensus in acceptance or modification of the recommendation.

If parents, children, or worker are dissatisfied with the outcome, the decision may be appealed orally or in writing to the coordinator of the Special Projects Unit. The policy manual provides for an appeal hearing procedure. If the client is not satisfied with the decision of the appeal hearing, the case is referred to the chief of the Office of Social Services Planning and Development of CSS, who is the final arbitrator for the agency. Those interviewed stated that there had not yet been an appeal of a review decision, to their knowledge.

Agency staff reported they were pleased with the implementation of the hearings thus far. They noted that there was increased participation of all parties due to the informality of the setting and that the reviews were usually more focused on permanency planning than the court hearings. Decisions at the hearings are considered binding unless court decisions differ.

3.3 Functioning of the Dispositional Hearings With the Case Review System

While there is no separate and distinct hearing which functions as the P.L. 96-272 "dispositional hearings", as indicated in Section 2, District law mandates court review at least every six months for children under six, and for children over six, every six months for the first two years and annually thereafter. While some children receive only ex parte reviews, as the 1982 program review indicated, 76 percent of children in care 18 months had had a full hearing by 18 months.

Similarly, those interviewed indicated that although there may be many continuances of the factfinding of the original dispositional hearings, most cases routinely reach the stage of the first review hearing at least within 18 months. There was one clear exception to this. These were cases in which there were also criminal charges against a parent. In these cases, neglect proceedings were normally stayed, at times with the result that no court review would be held within 18 months of placement.

3.3.1 Organization and Ex Parte Reviews

All review hearings are conducted by Superior Court judges. Because of the rotation system, a judge who hears a review may be seeing the case for the first time. Although some judges retain case assignment, most review hearings are heard by the judge who is assigned to the Family Division at the time the hearing is scheduled.

Agency policy specifies and interviews confirm that ex parte reviews by the judge in chambers rather than court hearings should not be, and are not usually, conducted within the first two years of placement. After this period, however, the ex parte procedure becomes much more common and sometimes results in cases having no review hearing for long periods of time. Concerns were expressed by a number of individuals that the ex parte procedure does not comply with the statute.

Because commitments expire after two years initially and then every year thereafter, reviews are often coordinated with extensions of commitments. It is the responsibility of the Department of Human Services to request extensions of commitment. This is done by a form motion and a form order which provides for extension unless there is an objection. Uncontested extensions are often done in conjunction with ex parte reviews, and in these cases no hearing is held on the extension motion.

3.3.2 Scheduling and Notification

Each review hearing is scheduled at the time of the prior hearing or prior ex parte review in the case. Because all the judges rotate through Family Division, the practice in scheduling reviews varies greatly. Some judges abide by the statutory minimum, whereas others routinely schedule hearings at three-month intervals. A few judges use 30- and 60-day reviews to keep pressure on for movement in a case, to monitor problem cases or to check up on the implementation of orders. A specific date is usually not given at the time of the prior hearing, but the number of months until the next hearing is set. The exact date is provided by the court assignment office, with the court then having the responsibility of notifying the parties and their attorneys of the date. Children are not given notice of the hearing. Information concerning hearing dates is computerized, with printouts available alphabetically by case and chronologically by hearing date.

There are a number of problems with notification of attorneys for parents and children. Notice sometimes arrives the day of the hearing, although attorneys have noted improvement recently. The policy of the clerk's office is to send out notice three weeks prior to the hearing. If an attorney is not present at the hearing, the judge usually goes ahead and hears the review.

Problems with the notification procedures for ex parte reviews can have particularly serious consequences. While attorneys are notified of the reviews, no acknowledgement from the attorneys is required. If no action is taken by the attorney to request a hearing, the ex parte review goes ahead. It is not uncommon for an attorney to have stopped representing a client, but to have not filed a withdrawal of appearance with the court. There is no way for the judge to know if the parties are still represented. If there is no longer an attorney for a party or if an attorney has not gotten notice, there is no one to object to the ex parte review or to inform the court of a need for a hearing. Cases can, therefore, sometimes remain on the ex parte track for long periods. Although the Office of Counsel for Child Abuse and Neglect is devoting some staff time to reviewing reports submitted for ex parte hearings from the perspective of representation for the children, there is no similar oversight to help assure representation for parents.

The monitoring of the expiration of commitments is done by individual caseworkers and the Family Division Assignment Office who must inform the court liaison workers of the need to request extensions and must submit a report. Motions for extension require 10 days notice to the parties, plus three additional days for notice by mail. DHS maintains a card file concerning expiration of commitments, but the court does not maintain an independent system for scheduling extension hearings and has no authority unless a motion is filed. At times, the agency fails to request an extension before the commitment has expired. In these cases DHS does a form request to the court for an extension nunc pro tunc. Concerns about this use of nunc pro tunc orders were expressed by a number of individuals.

3.3.3 Reports

Agency policy specifies that reports must be sent to the court 15 days prior to the hearing, and must be distributed by five days prior to the hearing to legal counsel. (Statute requires the report be submitted to the court 10 days prior to the hearing.) The actual distribution of court reports to attorneys in enough time prior to the hearing was reported to be a significant problem. The court liason office at DHS has printouts of cases listed for particular dates provided by the court. These printouts are done six, three, two, and one week prior to hearings. Individual caseworkers presently have the responsibility for submitting their reports to the liason worker to be filed at the court. The liason worker reported that she spent much of her time tracking down late reports and then making sure that the report catches up with the court file as it travels from the clerk's office to the judge's chambers prior to the hearing.

Late reports create several problems. First, attorneys must be sent a copy of the report after it is filed with the court. According to several attorneys, present practice does not allow for the report to get to them in sufficient time for the report to be reviewed, investigated and possibly challenged. Although attorneys can also review the report at the court, they have no assurance that the report will be there when they go to review the file. Second, late reports can interfere with a judge's review of the court files prior to the review hearing. Third, if a hearing must be continued due to a late report, the case is delayed, the parties and the attorneys are inconvenienced and the court's time is wasted, particularly if the judge has taken time to read through the file prior to the hearing. These factors put pressure on everyone to proceed with the hearing despite the lateness of the report.

Although agency policy (see Section 2) specifies what must be included in the case report, several court respondents had criticism of the form and content of the reports. This criticism noted that the reports rather than addressing the progress made in correcting the condition which resulted in the finding of neglect or on other plans to establish permanency for children, tended to be descriptions of the current situation accompanied by often vague recommendations. In their review, therefore, at present these reports do not serve their intended function of focusing the review hearing on planning for the child which would enable the child to go home or, when it has been demonstrated that this is not possible, on planning for an alternative permanent home.

3.3.4 Participation and Conduct of Hearings

Generally review hearings are attended by the parent, usually the mother, the parent's attorney, the child's guardian ad litem and the caseworker. Parents get notice of the hearings, but are not required to attend. Many individuals noted that when cases drag on for long periods and little happens at review hearings that parents become discouraged and often stop coming. Long waiting times at court are not infrequent. The notices do not set a particular time for the hearing but just specify morning or afternoon. Not uncommonly, cases scheduled for the morning are not heard until the afternoon. These practices can cause parents, especially those who work, to become even more discouraged.

Caseworkers attend the hearings, but the agency is rarely represented by an attorney. Corporation counsel will provide representation if a caseworker informs them that there is likely to be a problem, but this is unusual.

While foster parents are invited to the agency review hearings, unless foster parents have been made parties to the action, they do not get notice of the court review hearings. When the child is to be present, however, it is often the foster parent who brings him or her. When foster parents are at the court, they sometimes participate in the hearings. Almost everyone agreed that foster parents do not know that they can request to intervene and be made parties to everything but the factfinding hearing and have the right to appointed counsel if financially eligible. (D.C. Code §§16-2304(b)(2), 16-2354, 16-2360(d)).

Although the depth of the inquiry made at review hearings varies among the judges, almost all review hearings are conducted along the same model. The caseworker presents a report and then others, usually the attorneys, make statements, contesting some aspect of the report or providing additional information. The judge then may seek out additional information. Witnesses are almost never sworn in with testimony taken and cross-examination conducted. There was some uncertainty over whether or not a party has the right to demand this sort of formal hearing, but, in any case, it is almost never requested. It is unusual for parties to bring witnesses. Information from other individuals is normally provided by the caseworker or an attorney for a party.

It is also uncommon for the parties to negotiate prior to the hearing and come to a formal agreement which is presented as a stipulation to the court. Although factfinding hearings and the original dispositional hearings are often resolved in this manner, the practice rarely continues.

It appears that at least part of the reason for the lack of use of either formal hearings or negotiated agreements is the minimal involvement of most attorneys in the review process. (See Section 3.3.5 for a fuller discussion of the role of attorneys in review hearings.) Secondly, the lateness of reports makes preparation and negotiation more complicated. Finally, there is a perception among those interviewed that, with a few exceptions, the judges do not treat the review hearings very seriously, do not want to spend much time on the hearings and are willing to defer to the caseworkers with few questions asked. Although there are several judges who are reported to conduct meaningful inquiries about the cases, attorneys and caseworkers questioned were in agreement that in general the hearings are often a perfunctory exercise.

As in all neglect proceedings, a verbatim record of the review hearing is made. Orders are in writing, although a form order is almost always used. There is a space on the form for specific orders to be added, but it is a small space and orders specifying particular duties or obligations of the agency or the parents are unusual.

Individuals interviewed estimated that approximately one-third to one-half of the reviews are conducted ex parte. In these cases the judge in chambers reviews and signs the caseworker's report. Although ex parte reviews are scheduled for particular dates, they are not held if the casework report has not been submitted. Presently, the submission of these reports is the only trigger for the review to occur. Some cases may escape review for varying periods of time.

3.3.5 Counsel

Although counsel is routinely appointed for parents (at least for the parent named in the petition) and children in all neglect and termination of parental rights cases, all those interviewed expressed serious concerns about the quality of representation generally and particularly in review proceedings. Attorneys often do not see the caseworker's report until the morning of the hearing, at which time adequate investigation and preparation are impossible. It is rare for an attorney to question the report or to propose an alternative plan. Caseworkers reported that, with a few exceptions, attorneys almost never contact them between review hearings and that attorneys rarely act as advocates for their clients in the case planning process. Many said that it was not uncommon for a parent not to know the name of his or her attorney, or to be unable to reach that person. Attorneys virtually never attend the internal agency reviews and do not use these administrative reviews either as discovery or as a source of ideas for alternative approaches to a case. Some individuals noted that guardians ad litem sometimes fail to consult with the children they represent either about the contents of the caseworker's report or about the position to take at the hearing.

Because of their lack of involvement, attorneys often do not know of disputes among the parties. Many of the problems in a case are, therefore, never brought to the attention of the court at review hearings. When disputes do surface, attorneys rarely devote time or resources to conducting thorough negotiations or to preparing for a full, contested hearing. Although the problems with representation of parents appear to be more common and more severe than with representation of children, they exist widely among both groups.

This lack of effective advocacy is particularly troubling because many of those interviewed identified the role of the attorneys as crucial in obtaining a court decision which differs from the agency recommendation. Without advocacy from counsel for parents and children, court reviews are more likely to be pro forma ratification of the agency's position.

There have been attempts to improve practice among the attorneys who provide representation in neglect cases. The Office of Counsel for Child Abuse and Neglect provides mandatory training for attorneys on its lists and also offers voluntary follow-up sessions, both live and on videotape. There is back-up legal and social work advice available for guardians ad litem. Also, the Parent Representation Project at the Legal Aid Society attempted to provide a model of more vigorous representation of parents while it had funding for this work.

Many of those interviewed found the present system of attorney payment to be a serious barrier to effective representation. At the present level of reimbursement ($30 per review hearing with a maximum of two review hearings per year) all but the most minimal efforts must be done on a volunteer basis. The knowledge of both the legal aspects and the social service components of neglect cases is quite specialized. Few attorneys have the interest, the time, or the commitment to develop expertise in the handling of these cases. Attorneys who receive CJA appointments, many of whom are dependent upon this work for their incomes, are still forced to accept neglect cases with negligible payment. Although there are some dedicated practitioners who provide meaningful advocacy on behalf of their clients, they do not have a significant impact on the large volume of cases.

Corporation counsel, which provides representation for DHS, has almost no involvement at review hearings, largely because of the routine, uncontested nature of those hearings. Corporation counsel has also entirely abdicated any role in termination of parental rights actions.

Corporation Counsel's Office refuses to file motions for termination although the agency believes the action is warrented because of the additional work load this would entail for them. Therefore, the entire responsibility is left up to the guardians ad litem, who, under the statute, are permitted to file the actions. This situation not only leaves the agency without counsel to carry out their responsibilities under the law, but it also puts additional burdens upon already meager resources available for counsel for children.

3.3.6 Decisionmaking Standards/Authority of the Court

There is a lack of clarity over whether the District of Columbia statutory scheme contains a particular point at which a specific decision on the permanent home for a child must be made. Some of those questioned thought that the requirement of a court inquiry, after a commitment lasting 18 months, into why a termination motion had not been filed during the preceding 12 months constituted such a decision point. Others disagreed and saw the succession of review hearings as a process designed to achieve permanency, but a process without a fixed decision point. In addition to the requirement of the termination inquiry, they mentioned other components of the statute focused on permanency, particularly the listing of items which should be included in the review report and addressed by the court.

Despite this disagreement about a fixed decision point, there was general agreement that in practice the court often does not enforce the requirements of the statute. The review hearing rarely covers fully the subjects listed in the review statute and the form orders do not reflect the statutory categories. Although there is an increasing awareness of the need to inquire about termination of parental rights, this is still not routinely done. Most of those interviewed noted that many judges are unaware of the harms to children from placement and are extremely hesitant to return children home. Therefore, they rarely inquire about efforts made toward reunification nor do they prod the agency in this direction.

Although a major statutory revision of the neglect laws incorporated permanency planning elements, including the review requirements, was done in 1977, the court rules regarding neglect predate that revision and, therefore, fail to provide guidance in implementing the statutory standards. Although a committee has been working on a draft of new rules for approximately two years, they are still not close to completion and there has been little involvement from the court. The court has been developing a neglect bench book, but although some attorneys interviewed were aware that this was happening, none knew of its contents.

There was agreement that the court has the authority to order return of a child to the parents and to order provision of services as part of a plan for return, so long as the service is necessary and within the legal authority of the agency. Some mentioned problems of notice which need to be handled where agencies other than DHS are ordered to provide services. Problems with ordering long-term foster care were also raised. There is no applicable statutory category and, although a judge can order a child to remain with the same foster parent, doubts were expressed about whether the judge could require the agency to pay that foster parent. In addition, a judge could not block the filing of a motion to terminate parental rights. Many doubts were expressed over whether a judge could order the filing of a termination of parental rights motion. In practice, the judge makes a strong suggestion. There was agreement that the judge can order a child placed with a relative, placed in a particular group home or residential placement, assuming space, or placed for adoption within a certain time frame. Everyone also agreed that in the District of Columbia guardianship is not a viable alternative.

Although those interviewed thought the court can use its contempt powers to enforce its orders, this is rarely done. Monitoring and enforcement is usually accomplished through the scheduling of frequent reviews. Sometimes progress reports from the agency are required.

Many of those interviewed noted an increased awareness among a few judges of the need of permanence. This concern, however, does not manifest itself in a particular use of an 18-month review hearing. Although these judges inquire about termination of parental rights at this point, they often feel they cannot push for it because of the limitation on adequate services. Given inadequate services, a decision point is inappropriate. Most of those interviewed thought the court should be involved earlier than 18 months and should be stressing permanent planning, including the provision of reunification services. This would then make an inquiry at 18 months more meaningful and perhaps more decisive.

3.3.7 Relationship to Internal Agency Review

At present, judicial review and internal agency review operate independently of each other, except to the extent that the agency must take account of any court orders limiting their authority or prescribing particular conditions. Agency policy specifies that there must be correspondence between agency recommendations at the separate reviews and that results of administrative reviews be included in the court report.

4. PRELIMINARY DISCUSSION OF ISSUES

The District of Columbia's foster care review system became operational in two stages. Judicial review has been in effect for approximately six years, whereas internal agency review has been operating for just one year. This section will outline issues about the case review system which have been identified by individuals in the District of Columbia and observations made during the site visit.

4.1 Exclusions from Judicial Review

Because children who are voluntarily placed and children who have been voluntarily relinquished are not within the neglect jurisdiction of the court, they are not subject to any court review. Although these groups are picked up by the internal agency review process, there is no point at which the court now becomes involved.

For children who are voluntarily placed, the filing of a neglect petition can bring them within the court's jurisdiction. There needs to be clarification of Corporation Counsel's responsibility and agency policy regarding those cases which are referred for petitioning after 90 days in placement, but for which Corporation Counsel does not believe there are grounds for a finding of neglect. For children who have been voluntarily relinquished, there is no way under present law to bring them within the court's jurisdiction to review the case to ensure that planning is done for adoption.

4.2 Reports

The deficiencies of agency reports for review hearings were repeatedly cited as impeding the effectiveness of review. Procedures need to be established to ensure that reports are submitted ten days prior to the hearing. The court and the agency have begun some cooperative efforts in this direction. The court has begun regularly to provide the agency with computer printouts of daily calendars as much as six weeks, and as little as one week, prior to hearings. The agency must develop a system for checking that each case listed for review has a report submitted within the statutory period. Where cases are being reviewed ex parte, both the court and the agency need a way to trigger review other than by the submission of a report. At present, cases can evade review if no report comes to the court. This is particularly serious where an extension of commitment is required.

4.3 Ex Parte Review

Although individuals interviewed shared the impression that cases are rarely scheduled for ex parte review during the first two years of a commitment, many expressed concerns about the ex parte procedures in two major situations. First, after two years, meaningful review continues to be necessary on a periodic basis. If it is clear after that time that return home is not possible, termination of parental rights needs to be considered and pursued if appropriate. If return home has not been adequately explored, those efforts need to be initiated and monitored. The frequent use of ex parte review can contribute to long stays in foster care. Although some individuals did not object to ex parte reviews being interspersed among actual review hearings so long as statutory requirements for hearings are met, there is nothing in the present system, except requests by attorneys or the agency for hearings, which prevents cases from having repeated ex parte reviews.

Secondly, there are old cases in the system which are stuck on an ex parte track. These cases need to have hearings scheduled.

4.4 Judicial Training

There has been virtually no training provided for judges on permanency planning or on the Adoption Assistance and Child Welfare Act of 1980. In the last several years, there has been only one early morning session which was on child development issues and which a few of the most interested judges attended. The only training concerning review hearings has been the section of the general orientation for judges devoted to neglect cases.

Training takes on particular importance given the rotation of judges. Individuals interviewed were in general agreement that rotation was beneficial and helped to prevent neglect cases from being relegated to an inferior status in the court system. It does, however, post the problem of lack of expertise. Given this inevitable difficulty and in light of the aversion of many judges to these cases, training is crucial.

4.5 Counsel

Concern about the equality of representation for parents and children at review hearings is widespread. Without attorneys who are involved in the cases on an ongoing basis, communicating with their clients, advocating for things that are needed, and monitoring the actions of the agency, it seems unlikely that judicial review will be an effective tool in identifying or resolving problems in cases. Inadequate representation for children which merely passively ratifies the actions of the agency, can give a kind of moral authority to the agency's position. Inadequate repesentation for parents can make them feel even more powerless and discouraged than they might feel otherwise and, therefore, less likely to participate in efforts to reunite their families.

The present system of payment for attorneys was cited by many as part of the problem.

4.6 Change of Placement and Visitation

Notification of change of placement which may be oral, is required under District of Columbia law to be given to the parent, the guardian ad litem and the foster parent at least 10 days prior to the move. In an emergency, notice must be given within 24 hours (excluding weekends and legal holidays) after the move. There is a right to an administrative hearing to contest the move prior to the change of placement, or after, in an emergency (D.C. Code §16-2320(g)). There was general agreement that parents do not always get the required prior notice. Foster parents and guardians ad litem get notice far more frequently.

Although the District of Columbia statute requires visitation to be at least weekly unless there is a court finding that it would be detrimental to the child, while a child is in shelter care, there is no similar requirement following disposition. The plan for the child must include visitation "to maximize the parent-child relationship" but no specific times are set. At the initial disposition and at review hearings, attorneys often forget to request specific visitation orders from the court. Where there is no order, the agency can change visitation. No procedural safeguards are provided for parents or children despite the importance of visitation to eventual reunification.

4.7 Lack of Housing For Reunification

One of the major causes of the long term use of foster care in the District of Columbia is the severe shortage of housing. The lack of emergency housing causes children to be placed when a family is suddenly without housing and has no place to go. The unavailability of regular housing causes many children to remain in foster care long beyond the time when the other problems causing placement have been solved. At review hearings, judges are often reluctant to allow children to return to substandard or crowded housing. Many of those interviewed also noted a reluctance among judges to order that public housing be provided or that the agency assist with the high cost of initially obtaining private housing. Children are instead maintained in foster care. If review hearings are to function to move children out of foster care as quickly as possible, there must be concerted efforts to address the housing problem.

10. VIGNETTES

THE DISPOSITIONAL HEARING WITHIN THE COURT REVIEW PROCESS

Introduction

The following vignette illustrates the court review process in a state that generally issues dependency court orders for eighteen months. The agency must petition the court at eighteen months if they want to extend a child's dependency. These eighteen-month hearings are considered the dispositional hearing. However, as is illustrated in this particular case, the judge may request that court review hearings be held before eighteen months. If this occurs, the earlier hearing may result in a permanent decision for a child.

This particular vignette illustrates the court review process in an abuse/neglect case in which termination of parental rights was the final determination. This case specifically illustrates how court involvement in permanent placement decisions for children must include:

- The training of judges in child abuse and neglect and permanency planning to enable them to make informed decisions on permanent placements for children;
- The need to have clear laws indicating a judge's authority to order the establishment of treatment plans and specific services for parents; and
- The need to make appeals of parental termination cases a priority on the supreme court calendar so that a child's length of time in foster care is not unnecessarily prolonged.

Case Study

In early January, 1981, an investigation of the H. home was conducted after a neighbor reported her concerns about the condition of the children in the home: John H, age 4; Jim H., age 3; Sally H., age 2; and Bill H., age 1. Upon investigation, the social worker found severe medical neglect of all four children. She arranged for medical treatment at the county clinic. The worker felt that further services would also be necessary as the children were unable to communicate; the only language that the older children spoke was a language they had created for themselves. The social worker described the children as robots who never smiled. At the time of the initial investigation, the social worker noticed a belt hanging over a chair. When Mr. H. saw her gaze at the belt, he stated that he leaves the belt out for the children to see as a constant reminder for them to behave. The H.'s did bring the children to the county clinic for medical treatment. At that appointment, the doctor noticed severe bruises on the oldest boy's body. The abuse was reported to the social service agency and a temporary custody petition was filed by the county attorney at Juvenile Court. The judge granted temporary custody to the agency on January 13, 1981, with a review date in October, 1981.

Upon completing a social history of the family, it was found that this was Mr. H.'s fifth marriage. He had fourteen other children; the whereabouts of eight of them were unknown and three had been removed when he had resided in Indiana. Also, a social service history had been established on Mr. and Mrs. H., John, Jim, Sally and Bill. The two older boys had been removed in Florida and when they were returned home, the H.'s left the state while still under court order. Eventually the H. family relocated in Kansas. The state agency received reports of abuse on the H. children. The state was attempting to remove the children when once again the family fled.

Medical and psychological testing indicated that the children were severely developmentally delayed when they entered care. The oldest child was extremely withdrawn, the little girl had a partially paralyzed face which the doctor indicated could be because of constant hitting. She also was diagnosed to be an arrested hydrocephalic. The doctor indicated that this condition could have been caused from severe shaking of the body. Jim had one eye that turned in. During the nine months the children were in foster care they made great gains in their development. They were no longer using their made-up language and were communicating with their foster parents.

Mr. and Mrs. H. were not interested in receiving services from the social service agency. The temporary custody order did not order the parents to partake in any treatment, as the judge did not believe that state law for juvenile cases gave him any authority to mandate parents to have treatment.

In October, 1981 the case was reviewed in court. This case was the judge's first child abuse and neglect case. The agency recommended that the children remain in foster care. The judge decided that the parents needed another chance, and returned the children home. He ordered that the children remain temporary wards of the state and that the social worker make weekly visits to check for bruises. He also ordered that another court review of the case be conducted on February 6, 1982. The judge would not allow into evidence the past history of the H. family and social service referrals from other states.

The worker made weekly visits to the home. Bruises were not found on the children. The social worker reported that when she made visits there was a gun above the door. Mr. H. would look at the gun and then the worker and state that he would get even with her. The social worker would make visits with the public health nurse. Although the home environment had been considered dangerous, the sheriffs did not want to be included in the visits for they felt that would agitate Mr. H.

On February 2, 1982, Mr. and Mrs. H. took their children and left the state. The social worker was so concerned about the safety of the children that she tracked the family down through the father's VA checks and U-Haul rental. The family was tracked down in Oklahoma. The worker had charges filed against the parents for taking children out of the state while still under court order. She then flew to Oklahoma to pick the children up and place them back in the foster home in which they had previously been placed.

The children were back in care April, 1982 and the agency filed a petition for termination of parental rights. When brought back, the children related incidents of abuse by their father, specifically being beaten with a board. On June 4, 1982, the parents were brought back to the state and a termination hearing was held. At this hearing the judge allowed the information about the H. family's involvement with social service agencies from other states. When asked why he changed his mind, he stated, "Last time I made a mistake." The judge gave his final order on August 13, 1982, at which time he ruled for termination. The parents are appealing the termination. A tentative date for the appeal hearing before the state supreme court is in late April, 1983, eight months after the termination was granted. The attorney for the parents is appealing the case based on the fact that the judge didn't bring back a witness from a previous hearing to be cross-examined.

Presently the parents are in Tennessee where they are running a baby-sitting service and are under investigation for abusing the children they have taken care of.

Conclusion

This case illustrates the importance of the social worker's role in assuring that children receive proper services. The tenacity of this social worker is to be applauded. All too often, when families leave a state, responsibility for the family is abdicated. Actions taken by the social worker in this case helped to ensure that neither the agency administration nor the court neglected that responsibility.

If judges are going to make informed decisions on permanent placements for children, it is imperative they have the knowledge and tools to make those decisions. Training on permanency planning and child abuse and neglect is essential. Also, state laws should provide provisions to allow judges to order treatment and services for parents.

Finally, as judges make more determinations to terminate parental rights, it is to be expected that many of these decisions might be appealed. States need to make arrangements with their supreme courts to ensure that a child's length of time in foster care is not unnecessarily prolonged because of court calendar backlog.

THE DISPOSITIONAL HEARING CONDUCTED BY A FOSTER CARE REVIEW COMMITTEE

Introduction

This vignette illustrates several key areas of concern that may arise when reviews are conducted by a foster care review committee. (Reviews and dispositional hearings are the same under state law.) Areas of concern include the structure of the state law; county counsel without expertise in permanency planning issues; and a review committee which was uncertain of its role, unable to issue a binding decision, and unable to devise a way to express its concerns to the court.

Case History

A healthy baby girl was born on October 9, 1982, to a paranoid schizophrenic mother and an unknown father. The mother was formerly a school teacher. County social service staff removed the baby from the mother's custody at the hospital because of a psychiatric diagnosis that the mother would not be able to care for the child. A previous infant had also been taken from the mother at the hospital for the same reason.

Rather than filing a petition for temporary custody of the infant, which would have clearly established the court's jurisdiction on adjudication, the county attorney chose to file a petition for temporary investigative authority.

The caseworker assigned to the case had requested the county attorney file a petition for temporary custody but he had chosen not to do so. He indicated later he believed it was easier to obtain investigative authority under a TIA than under a petition for temporary custody. Five months later the petition for temporary custody had just been filed in court.

Once removed from her mother's custody, the infant was placed in foster care. After evaluations of the mother, both a psychologist and a psychiatrist made reports saying the mother would not be able to resume her care. The foster mother, agency caseworker and a nurse worked with the mother and baby on visits, attempting to teach the mother to care for her. By December, they feared actual harm to the baby during visits because of the mother's bizarre behavior and visits were ceased.

Between December and March, the mother left the state and returned to her parents' hometown in a neighboring state. No attempt was made to explore whether the mother's family could take the infant. The identity of the father was uncertain but the county attorney was proceeding against one potential father for termination of parental rights on the grounds of abandonment.

A review of the child's case was held by the foster care review committee in March of 1983. At that time, the caseworker reported that a petition for temporary custody had been recently filed by the county attorney and that the infant was doing well in foster care. She was planning to file a treatment plan with the court and gave a copy of the plan to the committee. It was her understanding that a treatment plan had to be filed with the court and acted on for three months before it was possible to pursue termination of parental rights in order to show, as required by the termination statute, that "an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful". She feared there would be complications because of the need to try to reach and work with the mother through another state. It was her estimate that it would be at least another six months before the child could be freed for adoption because there still had not been a trial on temporary custody. After that the treatment plan had to be approved by the court and, in her view, worked on for three months; then it was necessary to proceed with a termination of parental rights case. By that time, the healthy, white infant girl would have spent a full year in foster care in a case in which it seemed clear from the beginning the mother would be unable to resume her care.

At the committee meeting the committee seemed very concerned about the case but did not have a clear way to challenge what was going on, nor did they have knowledge enough about the system, apparently, to know what other courses of action were available and should be tried. They asked questions about the legal proceedings but seemed to feel forced to take the caseworker's word, who took the county attorney's word about what the legal possibilities were. In fact, a legal expert in the state SRS office later explained that filing for a TIA rather than for temporary custody right away was a recurrent problem, was often done because proof was easier to make out in court on a TIA, and, as in this case, was often allowed to extend for too long, delaying further proceedings on the case by months. In addition, the expert was of the view that it was possible in many cases to file a treatment plan and obtain court approval for it even during the period of temporary investigative authority. The review committee had no source of information to challenge the agency's and county attorney's view of the legal situation, however.

Review board members asked why a foster adopt situation had not been tried -- the present foster parents were an older couple who would have no interest in adopting. The option simply had not been fully explored, but again the review committee did not press hard on the point or express concern that this had not been explored in the first few days the child was in agency custody.

Finally, the review board filled out the form for the court report, answering questions "yes" or "no". Nothing about the form would have automatically suggested to the court that things were amiss in the case. Quite likely things would proceed as the caseworker outlined, at best, and the child would not be freed for adoption until she was one year old.

Conclusion

This vignette illustrates several points about the review system:

- The temporary investigative authority, which was designed to allow short term investigations, can be inappropriately used in cases in which a petition for a finding of abuse or neglect could be filed and can thus delay the case for an extended period.
- The grounds for termination of parental rights are inadequate to cover situations such as this when establishing a case plan serves no purpose because the mother is unable to participate in activities to assume care of the child.
- Inexperienced or an expert county counsel without specialized training may not know legal mechanisms which could be used to circumvent inadequacies in the law, may choose the legal route that involves the easiest proof although it is not best for the case, and may allow unnecessary delays in ignorance of their serious deleterious effect on a child.
- Failure to provide counsel to represent the child means a lost opportunity for another lawyer to push for action on the child's behalf.
- A review committee which includes and is chaired by agency staff may be unwilling to be highly critical of other agency staff.
- When the review committee is unsure of its role and function, includes and is chaired by agency

staff, does not feel entirely free to point out agency error, has not been thoroughly trained on these points and lacks an independent source of legal advice, it is less likely to be critical of agency performance and less likely to challenge the agency's view of the legalities and other aspects of the case.

- In order for review committee concerns to be translated into action for the child, the review committee must be able to issue binding decisions or must notify the court in some way of their serious concerns so the court can take action. Answering a series of questions "yes" and "no" will not accomplish this.

THE JUDGE'S AUTHORITY AT A DISPOSITIONAL HEARING

Introduction

The following vignette recounts a case that has developed into one of considerable court debate between the agency and the court, not over a placement decision, but over foster care payments to grandparents with whom the child is placed. The case is currently unresolved but is reflective of a larger issue as to what happens when the court orders the agency to perform an action contrary to its formal regulations.

The Reason for Child Protective Services Involvement

In December of 1981 the Department of Protective Services was called by a local hospital concerning an eight year old partially deaf boy who had entered the hospital for removal of gall stones. While at the hospital fecal matter had been introduced twice into his IV causing severe fever and infection. When the hospital, after many tests, discovered what had occurred they suspected the mother, since this occurred after her visits with the child.

Upon investigation it was found that Paul was a child with hearing and digestive problems whom the doctors were very concerned about because of the failure to gain weight. It was also found that in 1976 when the child had also been hospitalized a complaint had been filed by the hospital against the mother for withdrawing the childs IV. The parents denied the allegation at this time and the father accused the hospital of harassing the mother, stating that she had devoted herself to carring for the child. After preliminary investigation the case was closed.

Results of the most recent investigation indicated that Paul had two sisters who were healthy and made good grades in school. The parents were described as intelligent and the home well provided. The mother taught art classes part time at the local elementary school. The parents again denied the doctor's and hospital's accusations.

The Custody Hearing

After serious investigation the Department of Protective Services decided this time to proceed with the case. A protracted custody hearing then occurred with all parties represented by counsel. The child's doctor testified very strongly against returning the child to his parents. After extensive testimony, the judge gave custody to the agency and directed that the child be placed with his maternal grandparents. He also ordered weekend visitation at the parents home and psychological evaluation of the mother. In addition he ordered the Department of Social Services to pay the grandparents as foster parents. The judge also ordered 90 day reports back to court.

The Placement With Grandparent's/Psychological Evaluation of the Mother

In the 1 1/2 years since the child has been living with his grandparents, he has done well, has gained weight and developed a tolerance to eat more foods. The parents have been visiting the child on a very frequent basis, and he spends weekends at his parents home. Paul has expressed a desire to return home and live with his sisters. The grandparents, while willing to care for Paul, have also stated they think he should be able to return home.

The mother has had psychological evaluation. She still denies the accusation and the psychologist did not see value to further counseling. One diagnosis stated that she suffered from a condition that seeks to get attention through the medical crises of her child.

Petition to Return Custody

During Paul's six months in care the agency submitted 90 day reports to the court. The parents have also petitioned the court for return custody but thus far it has not been granted. The parents note the hardship involved in the 40-mile round trip to visit the child and the child's expressed desire to return home. Paul's doctor, however, noting his gain in weight and improved health and his mother's psychological evaluation has not advised this return.

The Issue of Foster Care Payments/The 12-Month Review

The initial court order specified that the grandparents were to be paid as foster parents for care of Paul. During the initial period after the court order, the agency attempted to get the grandparents to complete the necessary forms to become a licensed foster care home so that payments could be made as directed by the judge. They were unsuccessful in doing this.

The issue was then not pursued by the agency in the following months. However, at the 12-month review the grandparents petitioned the court on this matter, requesting payment. At this hearing the judge ruled the agency to be in contempt of the court order because of their failure to arrange for payment to the grandparents.

Agency Held in Contempt

A formal contempt citation was then filed against the agency. The agency is now involved in a legal battle to appeal this citation. The agency maintains that attempts were made to license the grandparents, but that the grandparents were not interested in completion of the necessary agreements. The agency maintains it is only able to make payments to licensed foster parents.

The major issue raised by this case involves the inability of the agency to comply with a judges order because of other policies and procedures, some of which have a legal basis. This issue also arises when specific services are ordered such as placement in a treatment facility for which sufficient funds are not available under the agencies maximum payment guidelines. However, one advantage to increased judicial involvement in foster care cases has been noted to be that the scant resources and options vailable to agencies would become more apparent.

Issues Raised by the Case

This case raises the following issues:

- How far does the judge's authority extend when his order conflicts with other mandates such as federal eligibility requirements?
- Could this situation have been avoided through procedures for communication to the judge of procedures binding on the agency?
- How could the agency have facilitated the grandparents becoming licensed foster parents?
- Should there be special funds available for relatives who care for children unable to return home, other than foster care payments?
- Are the parents and grandparents actually using this method to protest the removal of the child from his parents?

THE ROLE OF THE DISPOSITIONAL HEARING IN VOLUNTARY CARE PLACEMENTS

Introduction

This case illustrates the need for court review of children voluntarily placed in foster care and the need to contact the absent father of foster children as early as possible in the case. It illustrates the result of the court taking decisive action by ordering the agency to file an action for termination of parental rights at about the eighteenth month of court involvement.

Case Study

This case arose sometime in 1978, when a mother came to the agency seeking foster care placement for her four children. The mother explained that she needed to place her children in foster care because she had no money and could no longer afford to care for them, being unemployed and not having an apartment.

At the time of this writing, these children's ages are as follows: a nine-year-old boy, a seven-year-old girl, a five-year-old girl, and a three-year-old boy. The father of the oldest boy was deceased, and the father of the three youngest children's whereabouts were unknown.

As the mother was not ready to care for the chldren at that time, the mother entered into a voluntary contract with a private foster care program, which at that time was still permitted under law.

Emergency shelter care facilities were available but were too short term for this mother's needs.

In 1980, the law was changed to eliminate these voluntary contracts, and formal child-in-need-of-care proceedings were instituted. The children were adjudicated as being in need of care, and custody was placed in the agency.

Review hearings were held every six months.

The mother would appear at these review hearings but reiterate that she was unable to care for the chlidren at that time, but as soon as she obtained a job and an apartment, she would take the children back. The mother was living with her mother, and had had two more children during the time the four children were in foster care.

At roughly the third six-month review hearing, sometime in 1981, the judge ordered the agency to take steps to institute abandonment proceedings, a step which would have freed the children for adoption. The judge was unconvinced that the mother was serious in her voiced attempts to reassume the responsibilities of the children, a conclusion supported by psychiatric evidence.

Before the court order, the agency had made some unsuccessful, halfhearted attempts to locate the natural father of the three youngest children. However, the procedure required by a state Termination/Abandonment Project mandated a diligent search by the agency for the natural father, as an adjunct to the court ordered preparation of the abandonment petition, and as a result of this more intensive search by the agency, the natural father was located living in another city eighty miles away from the children's foster home.

The father expressed a great deal of interest in the children and attended all subsequent six-month review hearings, which continued to be held. The father signed a document formally acknowledging paternity of the three youngest children.

The four children had all been originally placed in one foster home, but due to personal problems of those foster parents, the sibling group had been moved into a second foster home. The second foster parents, although at first expressing a willingness to adopt, now only expressed a conditional willingness to adopt, "if no other family wanted them." Those foster parents had already adopted two other children in the interim and had certain reservations about four more. However, with the reappearance of the natural father, the foster parents became eager to work with him, and invited him to dinner and allowed him to telephone and visit the children at their home, a privilege they had never granted to the mother.

The mother became threatened at the reappearance of the father and enlisted the aid of several of her relatives in an attempt to have the relatives granted custody. The relatives made a few office visits with the children, but these visits upset the children and the maternal relatives decided not to seek custody.

At first, the three youngest children were also upset by the visits of their father, as he was a total stranger to them. The oldest child, who was not his child, was the only one of the siblings who remembered him.

But gradually, through a visitation plan which grew progressively more frequent, the children accepted the presence of their father.

The court and agency dropped the plans to file an abandonment petition, and as of five months ago, the four children were on an intensive visitation schedule with the fther that included overnight visitation in the father's city, and the official case plan was reunification with the natural father as soon as possible on a permanent basis.

Conclusion

This case demonstrates the results achieved in arranging for a permanent home for a group of siblings after the court took decisive action in requiring that a termination of parental rights case be filed on their behalf. Because of a thorough search for the natural father, he was found, and turned out to be the main hope for the children's permanent home. The case also shows the need for court review in voluntary placement cases. In this case, little progress was made toward a permanent home for the children until the court became involved in six-month reviews.

THE ROLE OF THE DISPOSITIONAL HEARING IN FAMILY REUNIFICATION

Case #1

Introduction

This vignette demonstrates the successful return home of an infant following court hearings in which a careful case plan for reunification was required by the court. When the parents met the conditions imposed, the court was able to return the child home after ten months in foster care. It also illustrates balanced roles between review board and court with review board recommending establishment of a clear case plan and the court issuing the appropriate orders. Later the review board again gave an evaluation to the court and the court was able to return the child home.

Case Study

The child in this case came into foster care at the age of two months. He was apparently abandoned by his mother in a relatively safe but unprotected spot near a caretaker's home. The mother left him there following an argument between the parents in which the mother reported the father threatened to kill the baby. She said she had left the baby in order to protect it.

The parents were married but both were young, being older teenagers. Their marriage was extremely unstable with many fights and separations and changes of residence during the first months the child was in foster care. During these months agency staff tried, without success, to get the parents involved in counseling and parenting class. A home aide was also provided to give occasional assistance in the home.

The review board reviewed the case after the child had been in foster care for six months. The board recommended to the court that the court spell out the steps the parents must take to obtain return of the infant and point out the possible consequences of their failure to stabilize their lives and cooperate with the agency. The board recommended that a case plan be developed for the parents with clear time frames for each aspect. They suggested the plan include parenting classes for both young parents as well as individual and marital counseling before the child would be returned home.

The court reviewed the case shortly thereafter and required that the agency develop such a case plan, including the specific services suggested by the review board and prescribed visitation.

After the court order was issued, the parents attended both marital and individual counseling and parenting classes. The court also ordered the parents to pay support while the baby was in care.

The reivew board reviewed the case again three months later and became concerned that although visitation was proceeding well on weekends, the parents, who were both working, had not had the baby with them during the routine of the work week. At the review board's suggestion, the caseworker provided opportunities for several mid-week visits before the next court hearing a few weeks later.

At that court hearing, some ten months after the child entered foster care, there was testimony that although the parents were complying with the specifics of the plan they were not necessarily making a great deal of progress and might not succeed with the baby if services suddenly ceased. The court did order that the baby be returned home but ordered that services be continued to the family, that the caseworker continue visits and that the home aide continue her assistance. The parents were ordered to continue their counseling program.

The parents kept the child successfully for several months but at the time of this information gathering the young couple had just separated and it was unclear if the mother could care for the baby alone. (She had no family in the area.)

Conclusion

This case demonstrates that decisive action in a case may occur earlier than the specific 12- or 18-month mandated court hearing and may be the result of monitoring efforts by the court over a period of time. It also illustrates that the court can sometimes get parents to act when they fully understand the consequences of their conduct, even when the admonitions of the agency are not enough to persuade them. The court's specific order about the case plan resulted in one being formulated and the child being returned home after it was successfully completed. The court was willing to return the baby home when it was possible to order a continuation of services after return.

THE ROLE OF THE DISPOSITIONAL HEARING IN FAMILY REUNIFICATION

Case #2

Introduction

This vignette illustrates the role that review hearings can play in focusing attention on planning for reunification of families rather than just addressing problems which arise in maintaining the status quo of placement. In this case, the agency had made virtually no attempts to reunify a mother and her two children. Instead, casework had been directed toward assisting a third party placement with a relative. Because the placement was considered "stable", the case was assigned to a division of the agency where caseloads are high. The judge, through extensive inquiry at a review hearing held approximately 18 months after the children came into placement, discovered the lack of attempts at reunification. He ordered that planning for return be done and that services be provided with further review scheduled for two months later. As a result of the court's review of the case, the mother has become much more involved and planning for return is proceeding. In addition, the case shows the pervasive role which lack of housing plays in attempts to plan for children.

Case Study

In the fall of 1981, a mother placed her two sons, who were 3 and 6 years old, into foster care because she had mental helath problems and was not able to care for them. The children were adjudicated neglected and committed to the Department of Human Services (DHS). In the spring of 1982, approximately eight months after placement, because the children were having many problems in foster care, they were moved to a third party placement with a cousin of their mother's who had two children of her own and was willing and able to take care of the boys. The cousin, who had been on the waiting list for public housing for four years, became eligible for a public housing unit for herself and her own children near the time that the two boys came to live with her. The public housing administration refused to allow her to move in with the two boys or to give her a bigger unit.

When a review hearing was held on the case in the spring of 1983, the caseworker recommended continued placement with the cousin. The judge was faced with a dispute between Corporation Counsel representing the District of Columbia, and the guardian ad litem for the children over whether the housing authority should be ordered to provide a unit big enough for the cousin, her own children and the two boys. Through careful questioning of the casworker from DHS, the judge learned that the caseworker had had very few contacts with the mother and did not know if she was interested in or capable of resuming care of her children. No services had been offered to assist in reunification and no plan for return had been done. The case had been assigned to the continuing services division of the agency in which caseloads are high because this was considered to be a stabilized case. The mother had been assigned an attorney, but her lawyer had not been active in the case at all. The judge also discovered that the fathers of the two boys had never been given notice of the proceedings and counsel had never been appointed.

Rather than resolve the dispute over public housing for the cousin, the judge ordered that the caseworker give the case priority and that a case planning conference be held to discuss possible development of a plan for the children to return home. Also, service on the fathers was ordered and counsel appointed. A further review was scheduled for two months later to evaluate the progress on the case.

Following the hearing, it was discovered that the mother's mental health problems had subsided and that she wanted to have her children back with her. A case planning conference has been held and a plan developed outlining services to assist the mother in resuming care of her children. Arrangements for day care are being made and public assistance payments to help with the cost of moving are being lined up. Unfortunately, the moter must still lcoate housing large enough for herself and her two boys. The fathers have been located and have begun some involvement.

Issues

1. The role of court hearings in assuring that attempts are made at planning for reunification and that services to assist in reunification are provided;

2. The danger of considering a case to be stabilized when reunification has not been adequately pursued; and

3. The severe problem posed by lack of housing in planning for children.

THE ROLE OF THE DISPOSITIONAL HEARING IN TERMINATION OF PARENTAL RIGHTS

Introduction

The following vignette illustrates the operation of the case review process in a state where the law governing case review stipulates time frames in which decisions on permanent plans for children must be made by the court. The law requires reviews no less frequently than once every six months until the permanency planning hearing (dispositional hearing) at twelve months, and periodically thereafter, but no less frequently than once each eighteen months, during the continuation of foster care. The law for this state also outlines decisionmaking standards, review findings and services that the agency is responsible for providing to families to help them work toward reunification.

This particular vignette exemplifies how this review process aided in the difficult decision of terminating parental rights in one foster care case.

Case Study

On April 16, 1981, Mrs. P. requested voluntary placement for her three children when she was evicted from the motel in which she had been living. Sandra, age two; Anthony, age four; and William, age seven, were taken into care with the understanding that Mrs. P. would find suitable housing and resume care of the youngsters on May 17, 1981. Mrs. P. did not contact the agency again until August 5, 1981. At that time she stated that she was addicted to heroine, that she was enaging in prostitution to support her drug habit, and that she was unable to care for her children. She was told that a dependency petition would be filed in Juvenile Court, that she needed to appear at the hearing, and that legal representation was available for her.

Mrs. P. failed to appear at the Jurisdiction/Disposition Hearing, but Mr. H., Sandra's father, did appear at the Disposition Hearing. Although he indicated concern for the welfare of Sandra, he acknowledged having a severe drinking problem and stated that it would be impossible for him to assume parental responsibility.

On August 28, 1981, the children were declared dependent and placed in foster homes. William was separated from Sandra and Anthony. Mrs. P., Mr. H. and the children had all been appointed counsel. Mrs. P. was ordered by the court to participate in counseling and a drug treatment program. Sandra's father was referred to an alcohol treatment program. Visitation under the supervision of the social worker was also ordered.

Upon entering foster care, all three children underwent psychological and medical evaluations. A social family history was also completed. The following findings were reported:

William:	William's father lived in West Germany and had never claimed paternity of the minor. William lived with his grandparents during most of his first two years of life while his mother lived elsewhere. When William was two years old, Mrs. P. assumed custody. As Mrs. P. had continuous contact with Public Health nurses and Welfare Department personnel, there were many reports indicating Mrs. P.'s difficulties in caring for William, including an unsubstantiated report of physical abuse. When brought into custody, William was apathetic, thin, pale and listless, and although he expressed feeling "small, lonely and helpless" the prognosis for his emotional development was hopeful.
Anthony:	Mrs. P. had failed to get prenatal care during her pregnancy with Anthony and admitted use of drugs and alcohol during her pregnancy. Anthony is required to wear orthopedic-designed shoes in bed and glasses due to a visual handicap. Anthony exhibits acting-out behavior and developmental delay in visual/motor areas.
Sandra:	Mrs. P. also failed to get prenatal care during her pregnancy with Sandra. A psychological evaluation revealed "symptoms of depressed behavior which were unusual in a two year old".

While all three children were living with Mrs. P. they suffered from infections indicative of poor sanitary conditions, medical neglect, and improper diets resulting in poor tooth development.

After the disposition hearing, Mrs. P. entered a drug rehabilitation program from October 1981 until December 1981. Shortly after the mother left the program she was incarcerated on charges of shoplifting and prostituiton. Mr. H. completed an alcoholic recovery program, found employment and visited regularly with both Sandra and Anthony.

A six-month review was conducted by the court in February, 1982. Mrs. P. and counsel, Mr. H. and counsel, the children's counsel, foster parents, and the social worker appeared in court. Mrs. P. stated that she could not provide a home for her children and declared her intention of relinquishing her oldest son William so that his foster parents could adopt him. The foster mother agreed to the plan. Mrs. P. also stated she was still not ready to assume custody of Anthony and

Sandra and Mr. H. indicated that he could not assume care of Sandra. Both Mrs. P. and Mr. H. were informed of the time limitations of the law and both of them acknowledged their awareness that the children could not remain in care over a year without jeopardizing the loss of their parental rights. Continued visitation was ordered by the court. Mrs. P. and Mr. H. continued visitation until May, 1982, when their whereabouts became unknown. Relinquishment of William was completed before Mrs. P. disappeared.

Twelve-Month Review - August 17, 1982

The case was brought before the court for a twelve-month review and consideration of a permanent planning hearing, as neither parent was expected to provide a home for the children within the next six months. The social worker recommended in her twelve-month report to the court that all three children were adoptable and that the foster parents of William be permitted to pursue adoption. It was also recommended that the court order commencement of proceedings to terminate parental rights for Anthony and Sandra.

The hearing was initially scheduled for August 5, 1982 and was continued to August 17, 1982 because both parents failed to appear.

On August 17, 1982 all parties appeared in court. Mrs. P. and Mr. H. stated that they planned to reconcile and wished to remain together to make a home for Sandra and Anthony. Mr. H. indicated he had rented a three-bedroom home and was prepared to have his family move into it with him. A stipulation was signed between all the parties to continue the hearing on October 19, 1982, when a review of the following plan would be completed by the court:

- Interviews and home visits by the social worker with the mother and the father were planned for a three-week period following the August 17 hearing date to provide a period to investigate the proposed plan for reunification.
- If the plan for reunification appeared to be safe and appropriate, visits were to be scheduled for weekends during this time with a long weekend visit for September 3 through September 6, 1982. This was to be followed by a three-week visit beginning September 17 and ending October 10, 1982. During that time the services of a family care worker were to be offered to the family.

- The psychologist who had previously evaluated the children would be asked to meet with the mother, father and children as a group during the week of October 4 to evaluate the situation. Another evaluation of the children would be requested after the return of the children to the foster home on October 10, 1982.
- All parties would return to the court on October 19, 1982 to either formalize a service agreement to return the children home or if the parents did not fulfill their obligations set a date for a contested Permanent Planning Hearing.

The court did find that the mother had relinquished rights to William, and a review hearing was set for February 11, 1983.

Directly following the hearing, an appointment was made by the social worker for a home call on the mother and father on August 19, 1982. An unannounced home visit was made on August 18, 1982, at which time it was learned that the father had not rented the home identified but was sharing a home offered by a friend, Harry. Harry is a paraplegic, confined to a bed or wheelchiar. Harry said he was attempting to share his home with his friend, Mr. H. The home was adequately furnished but very unkempt with unmade beds, clutter and no place prepared for the children to sleep if an overnight visit was to be made. The appointment for a home visit on August 19, 1982 was confirmed during the visit on August 18. A plan was made to discuss with Mr. H. his employment, alchohol recovery program, current alcohol counseling, child care plan and the need to clean up the house. These plans were to be discussed during the August 19 home visit. The need for followup alcohol counseling seemed indicated since on August 17, 1982 Mr. H. stated he did still occasionally drink.

A home visit was made on August 19, 1982, as planned in the company of a family care worker. Mr. H. did not appear for this appointment. A note was left requesting him to telephone to make another appointment. Since Mr. H. did not call, a letter was sent on August 23, 1982 to Mr. H. requesting an appointment and outlining the need to discuss his situation and plans as related to the children. Mr. H. was informed in this letter that no weekend visits could take place until he was interviewed and it was determined he could provide a safe place for the children.

On August 31, 1982 the social worker sent a letter referring Mr. H. for a pschological evaluation.

The mother was not involved in the planning as outlined by the court as she was incarcerated at the county jail on August 17, the afternoon of the day of the juvenile court hearing, on charges of recieving stolen goods, check fraud, prostitution and giving false information to a police officer. She was subsequently sentenced to serve fifteen days in jail. She was to be released on August 27, but since there was an outstanding warrent, she was arrested on August 31, 1982 on charges of possession of stolen property, possession of stolen credit card and possession of hypodermic needles.

Mrs. P. was released from jail on September 3, 1982 but had to appear for pre-trial conference on the above charges on October 14, 1982. In an interview on October 11, 1982, the mother informed the social worker that she had made a firm decision against reuniting with the father. It was her hope that in some way they could have joint custody of the children. She indicated she and the father disagreed and argued and that she felt certain now they could not reconcile.

Mr. H. failed to keep any appointments that were made with the psychologist. Both parents had inconsistent visiting patterns with the children.

October 19, 1982

The social worker submitted a report to the court recommending that termination of parental rights was in order as neither parent had followed through on the stipulated plan. Mrs. P. appeared for this hearing but Mr. H. did not because he was incarcerated on charges of forgery. As the agency's recommendation for termination was being contested by the parents, the hearing was continued until December 2, 1982.

Contested Permanent Planning Hearing - December 2, 1982

Both parents, legal counsel for all parties and agency social worker were present. Psychological evaluations had been completed on both parents and both children and were presented to the court as evidence. None of the evaluations recommended return of the minors to either of the parents. The parents stated they had no intention of establishing a home together, and the mother indicated she did not feel she was in a position to take the children but she wanted the father to have the children. The father stated he wished to have the children and said he would stay in Harry's home and have his niece provide child care. The department objected to returning the children home as they did not believe it would provide a stable home for the minors.

The court ordered the matter continued to January 31, 1983 and indicated that the father's request to reunite the family under his care would then be considered, providing Mr. H. refrained from the use of alcohol, committed no further law violations, established a suitable home and child care.

January 31, 1983

Legal counsel for all parties and the agency social worker were present. Mr. H. had been killed by an unknown assailant on January 1, 1982. The agency requested mother's rights be terminated and that adoptive placements be pursued for the children. The court ordered a termination of the mother's rights.

William will be adopted by his foster parents. The agency is pursuing adoptive placements for Anthony and Sandra.

Conclusions

Fifteen months after their original placement, a decision was made on a permanent plan for William, Anthony and Sandra. Terminating parental rights is often an extremely difficult decision for court and agency personnel to make. Everyone wants to believe that the situation will change. Although this case illustrates a judicial system more reluctant than an agency to terminate parental rights, the combination of an agency that pushes for permanency, a judge who requires specific goals and a law that outlines time frames for decisions established permanent plans for three children who otherwise might remain in care for years.

THE ROLE OF THE DISPOSITIONAL HEARING WITH A CHRONIC ALCHOHOLIC PARENT

Introduction

The following vignette describes the role regular court hearings and time frames set by the court can play in fostering parental implementation of a specific reunification plan goal; however, it also demonstrates the problems involved in long term rehabilitation of a chronically alcoholic parent. It also demonstrates that the assessment of the parent's progress at the time of the review hearing may be dramatically altered within a short period of time. This is a case in which several very specific case plan goals were adequately met by a mother at the time of the 18 month hearing which resulted in return of her children. However, within one month of their return home the children were returned to foster care.

Case History

Jill, born in 1971, and Josua born in 1978, are the children of an alcoholic mother. Jill and Josua have different fathers, both of whom are also involved with alcohol and drugs. The whereabouts of Josua's father is unknown. Jill's father has been very marginally involved in her life and has not provided for her support.

Jill first came to the attention of the social service department in 1974, when her mother, Mary, was arrested for public drunkenness. After spending five days in shelter care Jill was returned to her mother.

Records indicate that Mary admitted herself to alcohol detoxification centers on three occasions between 1975 and 1980. In 1978, another referral was made when Josua, aged six months, was found crawling in the mud outside a motel room, while Jill's father was caring for him, during one of Mary's hospitalizations. In this period six months of voluntary services were provided to Mary which included counseling, respite care and homemaker services.

The court became formally involved in 1980, following a complaint by the children's maternal aunt that Mary had become hysterical and injured herself in front of the children. Relatives reported that they were called several times a week because Mary was intoxicated and that the children were often neglected and were fearful during the violent quarrels of their mother.

The Initial Dispositional Hearing

At the initial court hearing the agency recommended that the children be declared dependent but continue to live with their mother under welfare department supervision. The agency also recommended that Mary be ordered to participate in an alcoholic rehabilitation program. The hearing was attended by Mary, Jill's father, a friend of Mary's, maternal aunts, a maternal uncle and the maternal grandmother. Attorneys for the mother, children and agency were also present. At this hearing, Mary admitted her alcohol problem, but denied the frequency of violent outbursts. The court concurred with the agency recommendation and set a review hearing for six months later.

The First Court Review

At the first six month review, the agency reported that Mary's situation had improved somewhat. She was attending an alcohol rehabilitation program and Jill had attended some parent-child sessions there also. Jill was doing well in school. Both children were described as strongly bonded to their mother. The court report prepared for the hearing included information obtained from the therapist at the alcohol rehabilitation program and Mary's sister that there had been a definite improvement. It was recommended that the dependency be continued and the children continue to remain at home. The six month review hearing was attended by the mother and the social worker only.

At the review a service plan was approved which called for continued participation in AA by Mary, putting the younger child in day care, and involvement of the children in the Alatot program. The recommendation was also made that Mary's boyfriend also become involved in counseling. The next review was set for six months later.

Removal of the Children

Three months after the review a petition was filed to remove the children from Mary's care. The reason for this was that the previous order was not effective because the mother continued to consume alcohol and had been unable to provide a home for the children. The precipitating incident was that her common-law husband swung a broom at Josua, missing him, but hitting Jill and causing a head injury which required medical treatment.

The children were then removed from the home and placed in the care of their maternal aunt. A reunification plan was then developed which would require Mary to maintain sobriety, attend an alcohol rehabilitation program, obtain full-time employment, and obtain a two bedroom apartment for care of the children.

The 12 Month Review

At the next review at 12 months it was recommended that the children remain with their aunt and Mary continue her alcohol treatment. By this time, Mary was living with her parents and had obtained part-time employment. She maintained regular contact with the children. Josua was having some problems in pre-school and in the home of his aunt but was showing some improvement. At the hearing, Mary stated that she supported the children remaining with her sister for another six months. She stated that she had maintained sobriety for 11 months and was communicating better with the children. The father of Jill agreed with the recommendations. The whereabouts of the father of Josua remained unknown.

The 18 Month Dispositional Hearing

At the time of the 18 month dispositional hearing the agency recommended to the court return of the children to Mary. The reasons for this recommendation were the continued sobriety of Mary, her employment for one year, her completion of an alcoholic rehabilitation program and continued AA meeting attendance. She had also obtained a two bedroom apartment. Both children expressed a desire to return to their mother. Regular visitation had been maintained. Mary stated at the hearing that, "it took having the children taken away to straighten me out," and she stated she had no desire to drink anymore.

The hearing was attended by Mary, the attorney for Josua and Jill, the maternal aunt, Jill's father, and the social worker and court officer. The court concurred in the agency recommendation that the children return home. Mary was ordered to maintain contact with the agency and to see that Josua participated in a program of psychiatric therapy.

However, only one month later in January of 1983, 11 year old Jill called her maternal aunt because her mother was in a drunken stupor and the children were unable to awaken her. The aunt came to the home and took Mary to the hospital. Maternal relatives informed the social service agency that Mary was also drunk again the next week and lost control of her car. Mary stated that "pressures" were too great for her and she was unable to manage with the children. She agreed to their placement with their maternal uncle. Jennifer's father was only recently released from a month's incarceration due to drunk driving charges and stated he was unable to care for her. He also stated he thought the maternal uncle would be a suitable caretaker for the children.

After the latest incident the oldest child stated she did not think her mother "would ever be able to care for us." Jill was described as a quiet, sad and reflective child. She stated she wanted to remain with her uncle. Josua also stated he wanted to remain with his uncle and aunt. Collateral evaluations done by psychiatrists also recommended out-of-home placement for the children. Note was made of the fact that while strong bonds existed between Mary and the children, she appeared unable to cope with the stress of caring for children. The need was seen for the children to have a stable, structured home. However, the relatives currently have not yet made a permanent commitment to the children.

This case, thus, remains unresolved. The agency has now decided that they must try to develop a permanent plan for the children that is not focused on reunification as a primary goal. The apparent choice is permanent placement or guardianship with one of the maternal relatives who have consistently aided the children and their mother.

Issues Raised by the Vignette

This vignette demonstrates how six month court reviews become integrated into case planning so that the time limits of the reviews also become the time frames for movement on the case and for plan implementation. In each hearing, six, 12 and 18 months, the court ordered what the agency recommended but the court functioned in a role as spur to the parent and agency to achieve specific case plan goals.

It is clear that Mary tried hard and was actually able to fulfill the specific court ordered reunification plans, however, the actual goal of reunification did not prove realizable. Within a month of the hearing returning the children to her they were again removed from her home.

This case raises the following questions:

- At what point does return home to the parent cease to be the goal?

- Could trial home visits have avoided the abortive one month return home that occurred after the 18 month review?
- Is the relative's ability/commitment to care for the child sufficient to warrant a permanent plan of care for the children in their homes, or permanent custody or guardianship of the children? Should termnation have been considered for the younger child?
- How can the time frames of court reviews and the development on specific cases be better coordinated?

☆U.S. GOVERNMENT PRINTING OFFICE: 1985-461-307:25207